

In the Matter of:)
)
Application for Certification) Docket No.
for the Metcalf Energy Center) 99-AFC-3
[Calpine Corporation and)
Bechtel Enterprises, Inc.])

FRIDAY, JANUARY 19, 2001

2:10 p.m.

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Robert A. Laurie, Commissioner, Presiding Member

Mike Smith, Commissioner Advisor

Stanley Valkosky, Hearing Officer

STAFF PRESENT

Kerry Willis, Staff Counsel

Paul Richins, Project Manager

APPLICANT

Jeffrey D. Harris
Christopher T. Ellison
Ellison, Schneider and Harris, LLP

Kenneth E. Abreu

Steve DeYoung

John Carrier, C2MHILL

INTERVENORS

Dian M. Grueneich, CVRP

Molli Dent, City of San Jose

Issa Ajlouny

Robert Williams

Scott Scholz

Elizabeth Cord, STCAG

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1 P R O C E E D I N G S

2 PRESIDING MEMBER LAURIE: Good Friday
3 afternoon to everybody. It's good to see you. I
4 had a nightmare, I woke up thinking today was
5 Thursday and we were going to see each other again
6 tomorrow.

7 (Laughter.)

8 PRESIDING MEMBER LAURIE: Welcome to the
9 continued Evidentiary Hearing on the Metcalf
10 Energy Project. My name is Robert Laurie,
11 Presiding Member of the Energy Committee -- Energy
12 Commission Siting Committee hearing the matter.
13 To my right is my Hearing Officer, Mr. Stan
14 Valkosky, and Chief Hearing Officer of the
15 Commission. To Mr. Valkosky's right is Mr. Mike
16 Smith, Chairman Keese's Senior Advisor.

17 Mr. Valkosky will review the matters to
18 be heard today and the procedures to be followed,
19 followed by introductions, and then we will
20 immediately move into the hearing. If you have
21 any questions, please ask before we get started,
22 and Mr. Valkosky will note that opportunity for
23 you.

24 Mr. Valkosky.

25 HEARING OFFICER VALKOSKY: Thank you,

1 Commissioner Laurie.

2 The purposes of today's Evidentiary
3 Hearing is to receive evidence on the combined
4 topics of Traffic, Transportation, and Hazardous
5 Materials Management. Parties presenting
6 witnesses on the agenda, as I have it, is
7 Applicant will present a panel; Staff will present
8 a panel; and Intervenor CVRP will also present a
9 witness.

10 I believe we're all adequately familiar
11 with our Evidentiary Hearing procedures, and
12 unless there are any questions, I will now ask the
13 parties to introduce themselves for the record. I
14 see no questions. Mr. Harris.

15 MR. HARRIS: Yes. I'm Jeff Harris, and
16 to my left is Chris Ellison. I'm with the law
17 firm of Ellison, Schneider and Harris, on behalf
18 the Calpine/Bechtel Joint Venture.

19 To Mr. Ellison's left is Mr. Steve
20 DeYoung, the Environmental Project Manager for
21 Calpine/Bechtel Joint Venture, and to my right is
22 Mr. Ken Abreu, who's the Project Manager for the
23 Metcalf Energy Center.

24 HEARING OFFICER VALKOSKY: Thank you,
25 Mr. Harris.

1 Ms. Willis.

2 MS. WILLIS: Thank you. I'm Kerry
3 Willis, Staff Counsel with the Energy Commission.
4 And to my left is Dr. Alvin Greenberg, and to his
5 left Mr. Rick Tyler, who will be testifying in the
6 areas of Haz Mat. And to his left is Steve Brown,
7 who will be testifying in Traffic and
8 Transportation.

9 HEARING OFFICER VALKOSKY: Thank you.

10 Mr. Williams, would you start off for
11 the Intervenors.

12 MR. WILLIAMS: Yes, sir. I'm Robert
13 Williams. I live one mile from the plant. I'm an
14 Intervenor, with a degree in Chemical Engineering,
15 Nuclear Engineering, and an MBA.

16 MS. GRUENEICH: Dian Grueneich,
17 Grueneich Resource Advocates, counsel for CVRP.
18 And to my right is Steve Radis, who will be our
19 witness today on Hazardous Materials.

20 MS. CORD: I'm Elizabeth Cord. I
21 represent the Santa Teresa Citizen Action Group.

22 PRESIDING MEMBER LAURIE: Ms. Cord.

23 MS. CORD: Yes.

24 PRESIDING MEMBER LAURIE: Who is the
25 young blonde woman that you bring with you on a

1 regular basis?

2 MS. CORD: I'd like to introduce my
3 daughter, Amanda Cord.

4 PRESIDING MEMBER LAURIE: Please --
5 please have the record note that Ms. Amanda Cord
6 is present. Thank you very much.

7 MS. CORD: Turn around and say hello,
8 dear.

9 (Laughter.)

10 MS. CORD: Thank you.

11 MR. AJLOUNY: My name is Issa Ajlouny,
12 Intervenor, and the scary thought is I had that
13 same dream last night.

14 (Laughter.)

15 MR. SCHOLZ: Scott Scholz, local
16 resident and Intervenor.

17 PRESIDING MEMBER LAURIE: Does that mean
18 that we're bonding?

19 (Laughter.)

20 MR. AJLOUNY: I was hoping to think so.

21 MR. GARBETT: William Garbett,
22 representing the group, The Public.

23 HEARING OFFICER VALKOSKY: Thank you.
24 Are there any other Intervenors present? There
25 are none.

1 With that, before I turn it over to Mr.
2 Harris, just a minor point of clarification.
3 There was some confusion on the exhibit list
4 yesterday, and as I understand it, and correct me,
5 Mr. Harris, Exhibits 34 and Exhibits 32 -- excuse
6 me -- Exhibit 34 and Exhibit 62 are, in fact, the
7 same. Is that correct?

8 MR. HARRIS: Yes, sir.

9 HEARING OFFICER VALKOSKY: Okay. So
10 with that, we'll just note that Exhibit 34 has
11 been received into evidence, and we will just
12 remove reference to Exhibit 62.

13 The next exhibit in numbered order,
14 however, is Number 66.

15 Also, Mr. Harris, you indicated that in
16 a request to Mr. Williams, you had page references
17 to a -- to one of your exhibits, I believe.

18 MR. HARRIS: I think that my colleagues
19 may have made the mistake of giving that to me to
20 hold onto, so -- no, someone from last night -- it
21 has the A and C at the bottom --

22 (Inaudible asides.)

23 MR. HARRIS: Why don't I propose that I
24 come back to you at the first break with that.

25 HEARING OFFICER VALKOSKY: That's fine.

1 Yeah, if it's not handy.

2 MR. HARRIS: And they know better than
3 to trust me.

4 HEARING OFFICER VALKOSKY: Okay. With
5 that, are you ready to proceed?

6 MR. HARRIS: Yes, we are. I'd ask the
7 panel of witnesses to please approach.

8 HEARING OFFICER VALKOSKY: Clarify. Are
9 these witnesses going to deal with the combined
10 topics, or the topic of Traffic, Transportation?

11 MR. HARRIS: The combined topics.

12 HEARING OFFICER VALKOSKY: Okay.

13 MR. HARRIS: So one witness on Traffic
14 and Transportation, one witness on Hazardous
15 Materials, and two rebuttal witnesses for
16 Hazardous Materials.

17 HEARING OFFICER VALKOSKY: Thank you.

18 MR. HARRIS: Should I proceed?

19 HEARING OFFICER VALKOSKY: Please do.

20 MR. HARRIS: Okay, thank you.

21 I'd ask that the witnesses be sworn.

22 (Thereupon Jeanne M. Acutanza,
23 Frederick Tornatore, James M. Dunstan
24 and Jerry P. Salamy were, by the
25 reporter, sworn to tell the truth,

1 the whole truth, and nothing but
2 the truth.)

3 MR. HARRIS: Thank you. I'm going to
4 ask the witnesses first to introduce themselves,
5 and then briefly summarize their qualifications,
6 as these witnesses will be available for cross
7 examination later, so I'd like to start with
8 Jeanne Acutanza for Traffic and Transportation.

9 MR. HARRIS: Could you please state your
10 name for the record?

11 MS. ACUTANZA: Jeanne Acutanza, A-c-u-t-
12 a-n-z-a.

13 MR. HARRIS: Thank you. And could you
14 briefly summarize your qualifications for us,
15 please?

16 MS. ACUTANZA: I have a Bachelor of
17 Science in Civil Engineering from Lehigh
18 University, have been practicing traffic and
19 transportation planning and engineering for over
20 17 years. I'm a Registered Civil and Traffic
21 Engineer in the State of California.

22 MR. HARRIS: Thank you.

23 Next I think I'll ask our witness on
24 direct, Fred Tornatore, to introduce himself and
25 -- or, actually, Fred, will you please state your

1 name for the record?

2 MR. TORNATORE: My name is Frederick A.
3 Tornatore. I'm a Project Manager with CH2MHILL.
4 I have a degree in Botany from UC Berkeley. I've
5 been involved for over 16 years with power plant
6 hazardous materials issues, and I've conducted
7 numerous audits on -- environmental audits on
8 electrical power plants.

9 I'm also a California Registered
10 Environmental Assessor.

11 MR. HARRIS: I would also ask Mr.
12 Dunstan, could you please state your name for the
13 record?

14 MR. DUNSTAN: My name is James Dunstan,
15 D-u-n-s-t-a-n.

16 MR. HARRIS: And can you please
17 summarize your qualifications for us?

18 MR. DUNSTAN: I hold Bachelor of Science
19 and Master of Science degrees in Mechanical
20 Engineering. I have been a Registered
21 Professional Mechanical Engineer in California
22 since 1973, and I have been directly involved in
23 the design of power plants and power plant systems
24 of various types for almost 30 years.

25 MR. HARRIS: Thank you.

1 And the last witness, Mr. Jerry Salamy.

2 Would you please state your name for the record?

3 MR. SALAMY: My name is Jerry Salamy, S-
4 a-l-a-m-y.

5 MR. HARRIS: Thank you. Can you briefly
6 summarize your qualifications?

7 MR. SALAMY: I have a Bachelor's degree
8 in Chemistry, and I've been permitting power
9 plants for the last 14 years.

10 MR. HARRIS: Thank you.

11 I'd like to proceed now with the
12 Transportation direct testimony from Ms. Acutanza.

13 TESTIMONY OF

14 JEANNE ACUTANZA

15 called as a witness on behalf of the Applicant,
16 having been first duly sworn, was examined and
17 testified as follows:

18 DIRECT EXAMINATION

19 BY MR. HARRIS:

20 Q You've already stated your name and your
21 qualifications. Specifically, which subject
22 matter are you here to sponsor today?

23 A Traffic and Transportation.

24 Q And which documents are you sponsoring
25 as part of your testimony?

1 A Section 810 of the AFC; Supplements A
2 and C of the AFC; Calpine/Bechtel Comments on the
3 CEC Preliminary Staff Assessment, Set 7.

4 Q And do you have one addition to your
5 documents, as well?

6 A Yes, I do.

7 Q And what would that be?

8 A Calpine/Bechtel comments on the CEC
9 Preliminary Staff Assessment, Set 8.

10 MR. HARRIS: Okay. For purposes of
11 identification, Section 8.10 of the AFC, pages
12 8.101 to 8.1028 is Exhibit 1.

13 Supplement A of the AFC, pages 1-12
14 through 2.5 and 3.10 to 3.11, that's part of
15 Exhibit 3.

16 Supplement C of the AFC, pages 1-1 to
17 pages 2.7, and pages 3-24 to 3-25, is part of
18 Exhibit 5.

19 PSA Comment Set 7 has been previously
20 marked as Exhibit 23, and the PSA Set 8 document
21 is a new document, and I'd ask that it be assigned
22 a number.

23 HEARING OFFICER VALKOSKY: Do we have
24 that available? Is that document available, was
25 the question.

1 MR. HARRIS: I think that document has
2 been -- it has been filed and served. I don't
3 know whether I have enough copies.

4 Okay. It's part of our Land Use
5 testimony. If it's going to cause a problem, we
6 can withdraw it at this point and re-introduce it
7 at that point. But we thought we'd get it into
8 the record early, so if there's objection --

9 HEARING OFFICER VALKOSKY: Okay. Is
10 there objection?

11 MR. AJLOUNY: Yes, there is.

12 HEARING OFFICER VALKOSKY: Okay. Can
13 you either provide copies, or --

14 MR. HARRIS: We'll have copies made.

15 HEARING OFFICER VALKOSKY: All right.

16 MR. HARRIS: I would note for the record
17 that the document has been filed and served on all
18 of the parties in this proceeding previously, and
19 I provide you with the docket number later, as
20 well.

21 HEARING OFFICER VALKOSKY: Okay. Well
22 --

23 MR. AJLOUNY: There's no objection if
24 it's provided today.

25 HEARING OFFICER VALKOSKY: Okay. Well,

1 subject to that understanding, we'll identify it
2 as Exhibit 66.

3 (Thereupon Exhibit 66 was marked
4 for identification.)

5 BY MR. HARRIS:

6 Q Okay. With that clarification, I
7 guess, are there any other changes, corrections,
8 or clarifications to your testimony?

9 A No.

10 Q And were these documents prepared either
11 by you or at your direction?

12 A Yes.

13 Q And are the facts stated therein true to
14 the best of your knowledge?

15 A Yes.

16 Q And do you adopt -- are the opinions
17 stated therein your own?

18 A I do.

19 Q And do you adopt this as your testimony
20 for this proceeding?

21 A I do.

22 Q I'd like you now to, in an introductory
23 fashion, summarize your testimony for us.

24 A We looked at transportation and traffic
25 impacts related to the Metcalf Energy Center,

1 specifically in relationship to congestion
2 management planning. We looked at the applicable
3 laws, ordinances, regulations and standards, and
4 we looked at a broad range of issues, such as
5 alternative modes transit and bike access
6 available to the site, and to the employees there.

7 Q In your analysis, did you analyze
8 traffic volumes?

9 A Yes. We looked at levels, we did a
10 level of service analysis which is consistent with
11 city, state, and county congestion management
12 practice -- congestion management planning. Level
13 of service analysis is a term related to
14 congestion, where Level of Service A is free-
15 flowing, and Level of Service F is very congested.

16 Our findings were that with either the
17 construction traffic proposed by the site or the
18 traffic that would result after operations, we
19 could meet the city and county level of service
20 thresholds.

21 qQ So you meet all applicable LORS in that
22 connection?

23 A Correct.

24 Q Did you also analyze the traffic --
25 excuse me, the accident information, as well?

1 A For the transportation facilities
2 serving the site, we looked at accident rates,
3 found that current accident rates did not pose any
4 high accident locations, and therefore our traffic
5 would not contribute to worsening those high
6 accident locations.

7 Q Thank you. In terms of the railroad
8 crossing, the private crossing at Blanchard Road,
9 did you also analyze that crossing?

10 A We looked at access to the site on
11 Blanchard Road, and -- and compliance with the
12 LORS, and found while it met all local LORS, as a
13 condition of certification we're -- we're
14 proposing installing arms and flashing signals at
15 that crossing.

16 Q Thank you. Did you also analyze the so-
17 called western access road?

18 A Yes. We -- I want to note now that it's
19 -- note that our project is fully mitigated and
20 complies with all LORS with or without the western
21 access road.

22 Q Okay. So the western access road is not
23 required for your LORS compliance; is that
24 correct?

25 A It is not.

1 Q Okay. Nevertheless, you did analyze
2 that as an option; is that correct?

3 A We did.

4 Q And what were your findings in that
5 connection?

6 A With or without the access, our project
7 is fully mitigated as far as traffic.

8 Q Okay. So that's -- you found that to be
9 a safe second access road?

10 A Correct.

11 Q In terms of cumulative impacts, did you
12 do a cumulative impacts analysis for the project,
13 as well?

14 A Yes.

15 Q And what did you find?

16 A We looked at the Metcalf Energy Center's
17 traffic related to the Coyote Valley Research Park
18 traffic levels. It's most significant to look at
19 construction impacts. Our construction traffic is
20 significantly higher than our operating traffic.
21 Found that while -- while Coyote Valley Research
22 Park traffic would be very high, our construction
23 is expected to be complete well before occupancy
24 of the Coyote Valley Research Park.

25 Q So before full buildout of that

1 facility?

2 A Before full buildout of Coyote Valley
3 Research Park. We also looked at the Conditions
4 of Certification which state that most of our
5 construction traffic will occur off peak periods,
6 as will trucks and deliveries related to
7 construction.

8 Q So with those and other mitigation
9 measures, the construction impacts are fully
10 mitigated?

11 A Correct.

12 Q And what about operational impacts?

13 A During operations, our traffic, our ten
14 trips that we'll generate during the peak hour are
15 fairly insignificant compared to traffic by Coyote
16 Valley Research Park. So there were no
17 significant impacts of that facility.

18 Q About how many trips will there be
19 during operation of the facility?

20 A Thirty-eight daily, ten in the peak
21 hour.

22 Q Okay, thank you. I understand that you
23 are also required by the conditions to develop a
24 traffic control plan. Can you briefly summarize
25 what that plan is, and who you developed it with?

1 A It's -- it's a typical requirement to
2 look at construction impacts and how they can be
3 mitigated. So with coordination between Caltrans,
4 the cities, county, and -- and with the -- the
5 facility, they developed a traffic control plan
6 that meets and mitigates all construction impacts.

7 Q Okay. You've had a chance to review the
8 Final Staff Assessment for the project?

9 A I have.

10 Q And you've reviewed those Conditions of
11 Certification?

12 A I have.

13 Q And you find those conditions to be
14 acceptable?

15 A Yes.

16 Q Thank you.

17 MR. HARRIS: I'd now like to go Mr.
18 Tornatore to present the direct evidence on
19 Hazardous Materials.

20 TESTIMONY OF

21 FREDERICK A. TORNATORE

22 called as a witness on behalf of the Applicant,
23 having been first duly sworn, was examined and
24 testified as follows:

25 ///

1 DIRECT EXAMINATION

2 BY MR. HARRIS:

3 Q Could you please restate your name for
4 the record again?

5 A Frederick A. Tornatore.

6 Q And you previously provided your
7 qualifications both orally here today and in
8 writing; is that correct?

9 A Yes, I have.

10 Q What subject matter testimony are you
11 here to sponsor today?

12 A Hazardous Materials.

13 Q And specifically, which documents are
14 you sponsoring as part of your testimony?

15 A The documents I'm sponsoring are Section
16 8.12 of the AFC; Responses to CEC Data Request
17 Numbers 48, 175, and 176; Responses to Intervenor
18 Jeff Wade's Data Request JW1-21 and JW2 56 to 59.
19 Calpine/Bechtel Comments on CEC Preliminary Staff
20 Assessment, Sets 2 and 7; Responses to Intervenor
21 Coyote Valley's Data Request 5D and 5E of Set 1;
22 8A through 8BB and 10A through 10C of Set 3.

23 Q Are you also sponsoring portions of
24 Supplements A and C?

25 A Yes, I am.

1 Q Okay. So those are two additional --

2 A Yes.

3 Q -- prior filings that ought to be noted.

4 MR. HARRIS: And let me identify the
5 documents for you, as well.

6 Section 8.12 of the AFC, pages 8.121
7 through 8.12-26; the Supplement A of the AFC,
8 pages 1-1 to 2-5, and 3-11 to 3-12. That's
9 previously marked as Number 3. The AFC was Number
10 1.

11 Supplement C of the AFC, pages 1-1 to
12 2.7 and 3-25, previously marked as Exhibit 5.
13 Responses to CEC Data Request Numbers 48B,
14 previously marked as Exhibit 13; and CEC Data
15 Request 48A, previously marked as Number 26. CEC
16 Data Requests 75 and 76, previously marked as
17 Number 14.

18 Jeff Wade Data Request JW1-21,
19 previously marked as 16A. Jeff Wade Data Request
20 JW-2-57 to -- to 59, previously marked as 16B.
21 Responses to CEC Data Requests 3E and 5E,
22 previously marked as Number 17. And Sets --
23 excuse me.

24 And Set 10A through 10C of Set 3A, which
25 is a new document, and I'd ask that that be

1 assigned a new number.

2 HEARING OFFICER VALKOSKY: Okay.

3 MR. HARRIS: I think I read that -- that
4 last one incorrectly.

5 HEARING OFFICER VALKOSKY: Responses --
6 you're talking about responses 8A through 8BB --

7 MR. HARRIS: Yeah, and --

8 HEARING OFFICER VALKOSKY: -- and 10A
9 through 10C of Set 3?

10 MR. HARRIS: -- 10A -- if I had vision
11 today, that's what I would've said. Yes.

12 HEARING OFFICER VALKOSKY: Okay.
13 That'll be marked as Exhibit 67.

14 (Thereupon Exhibit 67 was marked
15 for identification.)

16 HEARING OFFICER VALKOSKY: Could you --
17 just a second -- clarify, and I'm referring to the
18 first page of the testimony.

19 MR. HARRIS: Yes.

20 HEARING OFFICER VALKOSKY: You indicate
21 Calpine/Bechtel comments on the CEC Preliminary
22 Staff Assessment, Sets 2 and 7, have those been
23 previously marked?

24 MR. HARRIS: Two and 7 -- no, 23 and 24.

25 HEARING OFFICER VALKOSKY: Twenty-three

1 is Set 2, and 24 is Set 7; is that correct?

2 MR. HARRIS: Set 7 is 23, Set 2 is 24.

3 HEARING OFFICER VALKOSKY: Okay. Thank
4 you. And then the last clarification. Responses
5 to Intervenor Coyote Valley's Data Requests 5D, 5E
6 of Set 1, that's been previously marked as Exhibit
7 17; is that correct?

8 MR. HARRIS: Yes.

9 HEARING OFFICER VALKOSKY: Okay. Thank
10 you.

11 MR. HARRIS: I promise you won't have to
12 help me that much for the rest of the afternoon.
13 I'm sorry, I have -- my apologies to the Committee
14 and to everyone else.

15 BY MR. HARRIS:

16 Q Let's continue on. Mr. Tornatore,
17 specifically what subject matter testimony are you
18 sponsoring?

19 A The Hazardous Materials.

20 Q Okay. Are there any changes,
21 corrections, or clarifications other than those we
22 just listed?

23 A No.

24 Q And were these documents prepared either
25 by you or at your direction?

1 A Yes.

2 Q And are the facts stated therein true to
3 the best of your knowledge?

4 A Yes.

5 Q Are the opinions stated therein your
6 own?

7 A Yes.

8 Q And do you adopt this as your testimony
9 for this proceeding?

10 A Yes, I do.

11 Q Can you provide us with an opening
12 summary of your testimony?

13 A We examined the use, handling and
14 storage of hazardous materials at the proposed
15 Metcalf site during both construction activities
16 and operations, and their relationship to the
17 applicable laws, ordinances, regulations and
18 standards.

19 I might add that these haz mat -- the
20 hazardous materials are typical of a facility of
21 this type and magnitude.

22 Q Did you study the appropriate storage
23 requirements for these materials?

24 A Yes, I did.

25 Q And what findings did you make?

1 A All the hazardous materials that will be
2 stored on the site will be put into some type of
3 secondary containment structure, whether this be
4 bermed, a curbed area, steel or reinforced
5 concrete structures.

6 Q And that sort of containment complies
7 with applicable LORS?

8 A Yes, it does.

9 Q In terms of personnel training, what
10 findings did you make?

11 A All site personnel will be -- will
12 receive training to the -- to the first responder
13 awareness level. That's a training to recognize
14 incidences and take appropriate measures to keep
15 people away. They're trained to act -- react
16 properly to any type of a release.

17 Some of the personnel will also be
18 trained to the first responder operations level.
19 They are the ones that take the initiative to
20 control the release and make sure the proper
21 notifications are made to the agencies and also to
22 secure the facility.

23 Q I note the conditions require the
24 preparation of the hazardous materials management
25 plan. Can you briefly describe that plan?

1 A Yes. Hazardous materials management
2 plan identifies the hazardous materials at a site,
3 or at this site, in order to facilitate emergency
4 response. And it's -- it is submitted to the
5 applicable federal, state and local agencies.

6 Q Thank you. You are also required to
7 prepare a risk management plan for the ammonia
8 associated with the project. Can you describe
9 that plan, please?

10 A Yes. Briefly, it's to identify and
11 mitigate the potential risk associated with
12 ammonia on the site.

13 Q Thank you. In your review, did you
14 analyze the applicable laws, ordinances,
15 regulations and standards?

16 A Yes, I did.

17 Q Commonly known as LORS. And what was
18 your conclusion in terms of LORS compliance?

19 A That the site is in compliance with the
20 LORS to the ability that it will mitigate to
21 insignificance in the impacts.

22 Q Thank you. Turning now to the
23 Conditions of Certification in the Final Staff
24 Assessment. Earlier this week I think we received
25 from the Energy Commission Staff proposed changes

1 to their conditions. And did you receive that
2 document?

3 A Yes, I did.

4 Q And were you able to take a look at the
5 proposed changes?

6 A Yes. Yes, I did.

7 Q And those were the changes proposed to
8 Hazardous Conditions 2, 4, 5, 6, and 11. Is that
9 correct?

10 A Yes, it is.

11 Q And having reviewed those conditions,
12 are you -- do you find those conditions to be
13 acceptable?

14 A Yes, I do.

15 Q So the Staff proposed changes are
16 acceptable?

17 A Yes, they are.

18 Q You've also suggested a proposed change
19 to Condition 10 of the --

20 A Yes, we did.

21 Q -- haz mat --

22 A Yes, I have. Would you like me to read
23 it?

24 Q I think we're going to try to throw it
25 up on the -- on the screen so people can see it.

1 A Yes, that's -- I agree with that.

2 Q So you're able to see that from where
3 you're sitting.

4 A Yes.

5 Q And can you describe why you were
6 interested -- you stated in your prefiled
7 testimony that you were seeking clarification of
8 this condition; is that correct?

9 A Yes.

10 Q And can you describe the nature of that
11 concern and how it's been resolved?

12 A Well, we were concerned that any type of
13 combustible material would -- that might be near,
14 or the sulfuric tank, such as somebody walking by
15 with a cardboard box, could conceivably put the
16 project out of -- out of compliance. And I don't
17 believe that was the intent, to, you know, keep
18 materials like that from obviously being around or
19 near the facility. So this -- this clarifies that
20 it's the flammable materials that cannot be
21 permanently or temporarily stored near the
22 sulfuric acid tank.

23 There -- there may be a need to, you
24 know, the tank has to be refilled and that type of
25 thing, so there is a need to bring perhaps a

1 vehicle to it, a tanker to refill it.

2 Q So you've had a chance to discuss the
3 proposed change with the Commission Staff; is that
4 correct?

5 A Yes. Yes, I did discuss it with both
6 Mr. Tyler and Mr. Greenberg.

7 Q Okay. And you cannot make
8 representations on their behalf, but is it your
9 understanding that they're okay with this
10 condition, as --

11 A That's my understanding, yes.

12 MR. HARRIS: Okay, great. The version
13 on the screen should've said within a hundred
14 feet, instead of with a hundred feet, so we'll
15 make that correction. We will type up the correct
16 language and submit it to the Committee.

17 HEARING OFFICER VALKOSKY: Okay. For
18 present purposes, though, could you just read your
19 proposed version into the record, or have the
20 witness do that?

21 THE WITNESS: Okay. The project owner
22 shall design and operate the facility to ensure
23 that no fuels or lubricants are permanently or
24 temporarily stored within 100 feet of the sulfuric
25 acid tank.

1 BY MR. HARRIS:

2 Q And, Mr. Tornatore, it's your
3 understanding that this clarification better
4 embodies the intent of the Staff in providing this
5 condition; is that correct?

6 A Yes, I believe so.

7 MR. HARRIS: Okay. Thank you.

8 I'd like to turn now to Mr. Dunstan.

9 TESTIMONY OF

10 JAMES M. DUNSTAN

11 called as a witness on behalf of the Applicant,
12 having been first duly sworn, was examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MR. HARRIS:

16 Q You previously stated your name and your
17 qualifications. Which testimony are you here to
18 sponsor today, Mr. Dunstan?

19 A I'm here today to co-sponsor, with Mr.
20 Salamy, Calpine/Bechtel's rebuttal testimony to
21 CVRP's Hazardous Materials Management testimony.

22 Q So you and Mr. Salamy are available for
23 cross examination on this rebuttal testimony; is
24 that correct?

25 A Yes.

1 Q And are there documents associated with
2 your rebuttal testimony?

3 A The document we're sponsoring as
4 rebuttal testimony today is that entitled Rebuttal
5 to Coyote Valley Research Park's Testimony on the
6 Group 2 Hazardous Materials Management testimony,
7 for the Application for Certification for the
8 Metcalf Energy Center, 99-AFC-3, which was
9 submitted to the Commission on January 11th, 2001.

10 Q So this is your prefiled testimony that
11 was filed and served on all parties; is that
12 correct?

13 A Yes.

14 MR. HARRIS: I believe we may need a
15 number for this one.

16 HEARING OFFICER VALKOSKY: I would
17 advise you check first, and see whether it's the
18 same material that we've identified as Exhibit 36.
19 The date is January 11th, 2001?

20 MR. HARRIS: Right. It is -- it is
21 Number 36. And we'd ask that be moved into
22 evidence.

23 MS. GRUENEICH: I'm sorry. Was it to
24 move into evidence, or to identify as an exhibit?

25 MR. HARRIS: It's been previously

1 identified. I believe that's Number 36.

2 HEARING OFFICER VALKOSKY: It has been
3 -- it's -- yes, it has been previously identified
4 as Exhibit 36.

5 MS. GRUENEICH: I would request that we
6 wait for the movement -- for the motion to move
7 the exhibits into evidence until we conclude the
8 cross examination.

9 HEARING OFFICER VALKOSKY: That's fine.

10 MR. HARRIS: That's fine with me, as
11 well.

12 BY MR. HARRIS:

13 Q Are there any changes, corrections, or
14 clarifications to your testimony?

15 A No.

16 Q And were these documents prepared either
17 by you or Mr. Salamy, or at your direction?

18 A Yes.

19 Q Are the facts stated therein true to the
20 best of your knowledge?

21 A Yes.

22 Q Are the opinions stated therein your
23 own?

24 A Yes.

25 Q And do you adopt this as your testimony

1 for this proceeding?

2 A Yes.

3 Q Could you briefly summarize your review
4 of the CVRP testimony?

5 A In my opinion, the additional mitigation
6 measures recommended by Coyote Valley Research
7 Park would not significantly decrease the already
8 less than significant impacts to public health and
9 safety associated with the Metcalf Energy Center.

10 Q That testimony that you filed rebuttal
11 testimony to, had four major issues in it, and I'd
12 like to go through each of those with you.

13 The first one related to the
14 transportation of aqueous ammonia. What were your
15 findings with regard to that testimony?

16 A In their testimony, Cisco contends the
17 transport of aqueous ammonia to the Metcalf Energy
18 Center would create a new imposed risk on the
19 population of San Jose that not otherwise exists.
20 On the contrary, both aqueous and anhydrous forms
21 of ammonia are transported throughout San Jose and
22 the Santa Clara Valley on a daily basis.

23 Q Thank you. Are there other facilities,
24 then, that use this type of materials?

25 A Yes, there are.

1 Q And could you name a couple of those?

2 A Well, in addition to those listed in
3 Table 1 in our rebuttal testimony, which number in
4 the dozens, I would point the Committee to Figure
5 1 attached to our rebuttal testimony, which is an
6 aerial photo of the vicinity of the Agnews Power
7 Plant in North San Jose, which is surrounded by
8 Cisco's headquarters campus. The Agnews facility
9 includes an anhydrous ammonia storage tank of
10 15,000 gallons capacity, and as indicated on the
11 photograph that anhydrous ammonia storage tank and
12 its associated loading facilities is within a
13 couple of hundred feet of one of the Cisco
14 headquarters office buildings. That facility has
15 operated safely for its entire lifetime.

16 In addition, large quantities of aqueous
17 ammonia are used at the San Jose/Santa Clara
18 Wastewater Treatment Plant, which is in the
19 vicinity of both the Cisco campus shown in this
20 aerial photograph, and the area designated as
21 Cisco Site 6, which was the subject of an EIR
22 approved by the City of San Jose late last year,
23 in which the city found those two uses in that
24 proximity to be compatible.

25 In addition, I'd like to point out that

1 approximately three miles north and directly
2 upwind of our current location, is Hill Brothers
3 Chemical, which is the major distributor for both
4 anhydrous and aqueous ammonia for the Santa Clara
5 Valley.

6 Q Moving on to the second topic in the
7 rebuttal testimony. Can you please summarize your
8 testimony regarding the onsite storage of these
9 materials?

10 A In Cisco's testimony, they have included
11 --

12 MS. GRUENEICH: Excuse me. Just as a
13 minor correction, if we could have it clear for
14 the record, the testimony is on behalf of CVRP.
15 Cisco is not a party to the proceeding.

16 MR. HARRIS: Thank you.

17 BY MR. HARRIS:

18 Q Mr. Dunstan.

19 A I will try to remember that.

20 In our view, the testimony does not
21 contain sufficient clarity on the assumptions,
22 methodology, calculations, and procedures used in
23 the analysis to support the conclusion. We
24 therefore feel that this -- this is not a
25 supportable conclusion, and sufficient testimony

1 on the subject.

2 Q Thank you. Moving on to the third issue
3 raised in the rebuttal testimony, regarding onsite
4 storage of other hazardous materials, could you
5 briefly summarize that testimony?

6 A There are a number of errors in the CVRP
7 testimony in this area. First, it appears that
8 the testimony disregards the fact that the Metcalf
9 Energy Center will be designed, constructed, and
10 maintained in accordance with all the applicable
11 federal, state, and local laws, ordinances,
12 regulations and standards.

13 That is not the case. This facility will
14 be designed in accordance with all of those
15 applicable laws, ordinances, regulations and
16 standards. And the City of San Jose has a
17 consistent history of accepting such compliance as
18 mitigation of any potential hazards to levels of
19 insignificance. We will be consistent with that
20 policy.

21 Concerning assertions regarding the
22 natural gas pipeline for the Metcalf Energy
23 Center, again, the testimony appears to disregard
24 the fact that the pipeline for the Metcalf Energy
25 Center will be designed, installed, and maintained

1 in compliance with all federal, state, and local
2 laws, ordinances, regulations and standards for
3 its lifetime.

4 Further, very recent evaluations of the
5 performance of modern welded steel natural gas
6 pipelines in California, particularly those that
7 were subjected to the ground disturbances from the
8 Northridge Earthquake, and others, was published
9 by the National Center for Earthquake Engineering
10 and Research. The results of this study confirm
11 that pipelines constructed to current LORS
12 performed very well, even when subject to severe
13 ground disturbances.

14 Next, the testimony makes incorrect
15 assertions regarding the quantity of one of the
16 acutely hazardous materials listed in our
17 inventory. That is a material called "Triact".
18 The testimony incorrectly asserts that the Metcalf
19 Energy Center will store up to 100,000 pounds of
20 that material. That is not correct. In fact,
21 Table 8.12-3 on page 8.12-6 of the AFC correctly
22 shows the onsite inventory at 2,000 gallons, which
23 would be somewhere between 16 and 20,000 pounds.

24 Lastly, the testimony asserts that the
25 Metcalf Energy Center will use hydrogen gas for

1 cooling its generators. This is not correct. The
2 Metcalf Energy Center will not use hydrogen gas to
3 cool any of its generators. They will all be air
4 cooled.

5 Q The fourth issue raised was regarding
6 compliance to the applicable LORS. Can you
7 briefly summarize your testimony in that
8 connection?

9 A The testimony erroneously asserts that
10 the Metcalf Energy Center does not intend to apply
11 with all applicable federal, state, and local
12 LORS, and particularly cite San Jose Ordinance
13 Number 25838. This is contradicted by the AFC,
14 which in Section 8.12-7 presents a detailed
15 analysis of the applicable LORS, including those
16 for San Jose and Santa Clara County.

17 Q Thank you. Could you then give us a
18 bottom line summary of your rebuttal testimony?

19 A Again, and in my opinion, the additional
20 mitigation measures recommended by CVRP would not
21 significantly decrease the already less than
22 significant impacts to public health and safety
23 associated with the Metcalf Energy Center.

24 MR. HARRIS: Thank you, Mr. Dunstan.

25 Finally, now I'd like to go to Mr. Fred

1 Tornatore again.

2 DIRECT EXAMINATION (Resumed)

3 BY MR. HARRIS:

4 Q Did you have an opportunity to review
5 the testimony provided by Intervenor Mr. Issa
6 Ajlouny from Mr. Todd Spellman?

7 A Yes, I did.

8 Q And can you briefly summarize your
9 response to that testimony?

10 A Calpine/Bechtel will be training all the
11 onsite personnel to first responder awareness, and
12 some to -- awareness level, and some to the first
13 responder operations level, as I mentioned
14 earlier.

15 In the unlikely occurrence that there is
16 a rupture in the ammonia tank, the secondary
17 containment system will contain any release of the
18 aqueous ammonia. Immediate assistance from the
19 fire department would not be needed or required,
20 since the fire department's concern is for public
21 safety resulting from offsite consequences.

22 If assistance was needed, the Metcalf
23 staff trained to the operations level would
24 respond to contain the situation until the fire
25 department assistance arrived. And this is, we

1 believe, approximately less -- less than ten
2 minutes. This was based on a conversation that we
3 had with Captain Joe Reich, who's a captain of the
4 City of San Jose Hazardous Incidents Team, who
5 also stated the closest fire department was Engine
6 Company 27. This engine company would be the
7 first to arrive or respond to a hazardous
8 materials release at Metcalf, and they would
9 assess the situation and determine if additional
10 support was needed.

11 Then if support was needed, they would
12 then notify the hazardous incident team of the
13 type of release, and the support needed. And we
14 have an attached record of a conversation that we
15 had with Captain Reich.

16 Q And Captain Reich is the official who
17 would handle the field response; is that correct?

18 A Yes.

19 Q Thank you. Does this testimony from Mr.
20 Spellman in any way affect your conclusions
21 regarding the project's compliance with the
22 applicable LORS?

23 A No.

24 Q And does it in any way affect your
25 testimony with regard to the project's ability to

1 comply with the CEC's Conditions of Certification?

2 A No, it does not.

3 MR. HARRIS: I think I would make the
4 witnesses available for cross examination at this
5 point.

6 HEARING OFFICER VALKOSKY: Thank you.
7 Before we begin that, I have just a couple of
8 clarifying points.

9 The first couple concern the Traffic and
10 Transportation topic. When will Applicant decide
11 whether to build -- to in fact build the temporary
12 rail spur? I should say at what point of project
13 development.

14 MR. DUNSTAN: Because the question I
15 think goes to the schedule of the project rather
16 than the analysis, I'll answer. We intend to, and
17 working with the Union Pacific Railroad right now,
18 to construct the temporary rail spur I would say
19 within the first six months of construction. The
20 timing of the installation of the rail spur will
21 be such that we can be confident that it will be
22 completed prior to the delivery of the first of
23 our heavy equipment modules.

24 HEARING OFFICER VALKOSKY: Okay. So
25 that is, in fact, something that you are presently

1 contemplating will be done, because I believe in
2 the testimony it indicates that that's an option
3 you're considering.

4 MR. DUNSTAN: We are committed to
5 building that rail spur, and we are working
6 actively with Union Pacific on the engineering and
7 the agreements to implement that plan.

8 HEARING OFFICER VALKOSKY: Okay. Thank
9 you.

10 Secondly, I believe, and unfortunately I
11 can't find the specific reference, but I believe
12 that Transportation testimony indicates that
13 pipeline construction should take place only at
14 night or on weekends. Is that correct?

15 (Pause.)

16 MR. DUNSTAN: Pardon the delay. The
17 conversation here was to whether that finding was
18 in Traffic or in Noise. I believe it was a Staff
19 recommendation that that work all be done at
20 night. I think our -- our plan is to work with
21 the City of San Jose public works, police,
22 traffic, safety organizations, so that the
23 construction of the pipeline minimizes disruptions
24 in traffic.

25 HEARING OFFICER VALKOSKY: That is

1 correct. So my question is, is that the present
2 plan, that this construction only be done at
3 night or on weekends, the construction of the
4 pipeline?

5 MR. DUNSTAN: That is not correct. Our
6 plan is to develop a traffic control plan which
7 would be subject to approval of the Compliance
8 Project Manager in coordination with the City of
9 San Jose public works, traffic, and safety
10 departments.

11 HEARING OFFICER VALKOSKY: Okay, thank
12 you. Thank you for that clarification. That's
13 what I needed.

14 PRESIDING MEMBER LAURIE: A brief
15 question. On the issue -- and I don't know who'd
16 know the answer to this -- on the issue of the
17 construction of the pipeline. The Applicant
18 earlier requested a modification of Noise
19 Conditions allowing the -- we'll call it the
20 tunneling machine to operate 24/7.

21 Are we -- and here we talk about
22 construction only during certain working hours.
23 Are those conditions inconsistent, or are we
24 talking about two different issues?

25 MR. DUNSTAN: I think I need

1 clarification. I believe Mr. Valkosky's question
2 concerned the water pipeline, and the discussion
3 concerning around the clock HDD pertained to the
4 gas pipeline.

5 PRESIDING MEMBER LAURIE: Okay. So
6 which -- which pipeline is -- this condition talks
7 about hours of construction for the gas pipeline.

8 MR. DUNSTAN: I'm sorry. Which
9 condition are you referring to, sir?

10 PRESIDING MEMBER LAURIE: Okay. I am
11 confused. And I don't have it in front of me. I
12 -- I will get it. I thought we were just talking
13 about limiting the hours of construction of the
14 gas pipeline. Did I -- did I not hear that?
15 Maybe I just mis-heard.

16 MR. DUNSTAN: And maybe we misspoke. My
17 response to Mr. --

18 MR. HARRIS: I think the clarification
19 is that the water pipeline was the one where you
20 had the discussion about nights and weekends.

21 HEARING OFFICER VALKOSKY: Okay. So
22 that is, in fact, just limited to the water
23 pipeline.

24 MR. HARRIS: Yeah. It seems like it was
25 last week, but it was just yesterday.

1 HEARING OFFICER VALKOSKY: All right.

2 And the -- the 24 hour directional drilling
3 clarification that you sought on one of the
4 conditions was related to the gas pipeline; is
5 that correct?

6 MR. HARRIS: That's correct.

7 HEARING OFFICER VALKOSKY: Okay. Thank
8 you for that.

9 PRESIDING MEMBER LAURIE: Let me ask
10 just one more question on Haz Mat.

11 I'm familiar with the proposed
12 mitigation measures, and the allegation that it is
13 -- that the proposed measures are LORS compliant.
14 Assume for purposes of discussion that all legal
15 standards have been met. Assuming also that risk
16 to the community is unacceptable. And assuming
17 that your grandkids lived within a half-mile of
18 the plant. Given what your proposals are, what
19 more can you reasonably do to provide added
20 security? Again, assuming for purposes of
21 discussion that you are LORS compliant.

22 MR. DUNSTAN: The collective opinion of
23 the group, and recognize the assumption that our
24 grandchildren live half a mile away and are part
25 of that community that perceives an unacceptable

1 risk, I think that this is an endless debate as to
2 what more could we do, beyond LORS compliance.

3 My understanding is that LORS compliance
4 is the standard for protection of the community
5 against risks. And further, my understanding is
6 that in the State of California, as regards
7 facilities for the handling and storage of both
8 anhydrous and aqueous ammonia, the safety record
9 of LORS compliant facilities, at least since the
10 19 -- early 1980's, is perfect.

11 PRESIDING MEMBER LAURIE: Okay. Any
12 additional testimony on that question?

13 HEARING OFFICER VALKOSKY: Are you
14 familiar with the additional mitigation measures
15 proposed by CVRP?

16 MR. DUNSTAN: I have read them, yes.

17 HEARING OFFICER VALKOSKY: Is it your
18 testimony that those measures are feasible, and
19 feasible being defined as technologically capable
20 of being implemented?

21 MR. HARRIS: Mr. Valkosky, question of
22 clarification. Are you -- would you like the
23 witness to go through those proposed changes one
24 by one and --

25 HEARING OFFICER VALKOSKY: If the

1 witnesses are prepared to do that, that would be a
2 great way to proceed.

3 MR. HARRIS: I think our witnesses are
4 prepared to do that, and they'll do it as a panel.

5 HEARING OFFICER VALKOSKY: Okay. Thank
6 you.

7 (Pause.)

8 HEARING OFFICER VALKOSKY: Mr. Harris,
9 would you like a brief time to have the witnesses
10 prepare? Or are they ready to proceed?

11 MR. HARRIS: Actually, that might give
12 me my opportunity to find my lost papers, as well,
13 so could we have ten minutes, or longer?

14 HEARING OFFICER VALKOSKY: Okay. How
15 about 3:15, we'll reconvene.

16 MR. HARRIS: Okay. Thank you.

17 (Thereupon a recess was taken.)

18 HEARING OFFICER VALKOSKY: Mr. Harris,
19 proceed, please.

20 MR. HARRIS: I think we were with your
21 questions, and our witnesses are going to go
22 through the individual proposals by CVRP and
23 provide you their comments.

24 HEARING OFFICER VALKOSKY: Thank you.

25 MR. HARRIS: We'll turn to Mr. Dunstan

1 and the panel.

2 MR. DUNSTAN: Rather than requesting a
3 repetition of the question, my understanding is
4 the question was whether any or all of the changes
5 proposed by CVRP are reasonably technically
6 feasible.

7 HEARING OFFICER VALKOSKY: Are
8 technically implementable. Fundamentally, what
9 I'm looking for, sir, is the Applicant's reaction
10 to the conditions proposed by CVRP, and your view
11 of why they should or should not be considered for
12 adoption by the Committee.

13 MR. DUNSTAN: Thank you. And we are
14 reviewing CVRP's proposed changes in the context
15 of the changes already proposed by Staff.

16 MS. GRUENEICH: Let -- sorry to
17 interrupt, but in order to make sure we're not
18 wasting any time, when it is time for Mr. Radis to
19 testify we will state that with regard to the
20 Staff's proposals for the changes to HAZ-1 and
21 HAZ-6, that those are acceptable to CVRP.

22 HEARING OFFICER VALKOSKY: Thank you for
23 that clarification. And does this -- Ms.
24 Grueneich, does this replace your proposed changes
25 contained in Mr. Radis' testimony?

1 MS. GRUENEICH: I don't think I would go
2 so far as to say that they replace them. But if
3 the Committee did decide to adopt the Staff's
4 proposed changes, CVRP will not comment adversely.
5 So I -- we're not planning on actually replacing
6 them in the testimony today.

7 HEARING OFFICER VALKOSKY: Right. But
8 -- but in other words you'd be --

9 MS. GRUENEICH: But we will say that
10 they're acceptable --

11 HEARING OFFICER VALKOSKY: -- you'd be
12 satisfied with --

13 MS. GRUENEICH: -- in lieu of the
14 proposals.

15 HEARING OFFICER VALKOSKY: Thank you.

16 Okay. Mr. Dunstan, proceed.

17 MR. DUNSTAN: Fine. Well, then I'll
18 begin with HAZ-2. There are -- there are two
19 issues of concern here. First was the references
20 to hydrogen, which is simply inappropriate in both
21 the condition and in the verification, so we would
22 -- we would want those references deleted.

23 Other than that, the concern is
24 regarding the numbers of agencies that would be
25 involved, and the inclusion of all recommendations

1 that all of those agencies might present. We --
2 we are concerned that this may dilute the
3 authority of the Commission, through the CPM, in
4 determining what is reasonable for application to
5 the project. So we would prefer that the CPM be
6 the arbiter of the applicability and
7 reasonableness of the recommendations of those
8 other agencies. With those clarifications, we
9 would not object to this type of language.

10 HAZ-3, the introduction refers to the
11 bulleted items, so we'll address the bulleted
12 items.

13 The first two bulleted items appear to
14 be under the purview of agencies that govern the
15 transportation of materials, rather than those
16 that govern the operation of power plants, and
17 would appear to be the purview of agencies
18 offsite, and would impose on the project owner
19 responsibilities for actions taken by those not in
20 their employ. And, in fact, would be even
21 redundant and may be in conflict with the
22 requirements of the current regulatory agencies.
23 So we would -- we would not want to accept those
24 first two items.

25 The third item is -- is problematic,

1 although technically feasible, because it would
2 increase the frequency of delivery to the
3 facility.

4 HEARING OFFICER VALKOSKY: By how -- how
5 many more deliveries would be required by limiting
6 ammonia deliveries to daytime?

7 MR. DUNSTAN: I -- I beg your pardon.
8 We would -- we would need greater onsite storage
9 capacity in order to run weekend to weekend
10 without replenishment. So this would either be --
11 it would be greater inventory, whether it's in a
12 larger tank or two tanks. But it would require a
13 change in the project configuration with whatever
14 impacts are associated.

15 HEARING OFFICER VALKOSKY: Okay. Now,
16 as I read it, it's not necessarily limited to
17 weekend to weekend, but it's limited to daytime or
18 weekend, or holidays.

19 MR. DUNSTAN: I beg your pardon. If the
20 intent is that it not be at night, if that was the
21 intent, we don't object.

22 HEARING OFFICER VALKOSKY: Okay.

23 MR. DUNSTAN: That's --

24 HEARING OFFICER VALKOSKY: And -- and
25 again, that's --

1 MR. DUNSTAN: -- the opposite --

2 HEARING OFFICER VALKOSKY: We can
3 explore that when CVRP presents their witness.
4 But I just -- so that -- that is my reading of it,
5 anyway. Okay. Continue.

6 MR. DUNSTAN: The fourth bulleted item
7 would be acceptable to us.

8 And the last text, again, let me review
9 the Staff's proposed changes on HAZ-3. There are
10 no changes. So again, we would be bringing in an
11 additional agency, whereas we would -- we would
12 prefer to have the CPM be the arbiter, and
13 whatever agencies the CPM felt appropriate to
14 include would be fine with us.

15 As regards HAZ-4, the first proposed
16 change, the phrase, as amended by local ordinances
17 and regulations. Given our current situation
18 relative to the City of San Jose, there would be a
19 concern that a condition might be imposed that
20 would be practically impossible for us to meet.

21 HEARING OFFICER VALKOSKY: Okay, now,
22 stop there for one second. Wouldn't -- wouldn't
23 the fact be that to the extent that there is an
24 applicable local ordinance, that you would have to
25 meet it to comply with LORS anyway?

1 MR. DUNSTAN: We would not want to be
2 faced with a situation in which power plants were
3 prohibited from using ammonia by the City of San
4 Jose.

5 HEARING OFFICER VALKOSKY: Okay. Thank
6 you.

7 PRESIDING MEMBER LAURIE: So are you
8 distinguishing between review and veto power, or
9 approval power over plans and programs?

10 MR. DUNSTAN: Correct. That -- that is
11 correct.

12 PRESIDING MEMBER LAURIE: Thank you.

13 MR. DUNSTAN: The balance of the stated
14 requirement is technically feasible. The concern
15 would be whether environmental agencies would
16 allow an ammonia tank to be buried in any
17 configuration. I simply don't know. Our
18 commitment has been that we will have no
19 underground storage tanks of any kind in the
20 Metcalf Energy Center, because of concerns of
21 potential groundwater contamination and because of
22 -- of potential for relatively high groundwater in
23 this particular site.

24 HEARING OFFICER VALKOSKY: Okay. How
25 about the alternative in there, utilizing a

1 double-walled storage vessel.

2 MR. DUNSTAN: That is -- that is
3 certainly feasible. However, there is a
4 subsequent proposed condition -- I beg your
5 pardon. There is the verification requirement
6 that would basically place the burden on us to
7 prove an above-ground tank were appropriately
8 safe, compared to an underground tank.

9 HEARING OFFICER VALKOSKY: Okay. Then
10 how about the second area, containment basin.

11 MR. DUNSTAN: That is certainly
12 feasible. It appears, from my reading, that the
13 intent in the aggregate appears to be to prefer a
14 double-walled tank in a secondary containment, or
15 in the ground. I would say either of those, any
16 of those combinations is technically feasible,
17 subject to the concerns I previously expressed
18 about basically putting anything, any tank in the
19 ground, whether in a -- in a vault or simply
20 buried with appropriate protections.

21 And again, there's the addition of the
22 number of agencies that would all have to agree
23 they're satisfied, and we would prefer to have the
24 CPM be the arbiter of the reasonableness of those
25 requirements.

1 HAZ-5, the performance level is no
2 problem, the 77 ppm. I'm reminded that our worst
3 case analysis already indicates that we're down
4 around 13 and a half -- 13.4 ppm at the fence,
5 with the configuration we've already proposed. So
6 the performance level is -- is no problem. Adding
7 a scrubber is certainly technically feasible.

8 The proposal on the table for our
9 project right now is either a single-walled tank
10 in a secondary containment, with a cover and
11 deluge sprays, suppression sprays, which would
12 have much the same function as a scrubber, or a
13 double-walled tank, again, with the suppression
14 sprays triggered by probably an ammonia leak
15 detector or -- or an operator. So that could be
16 done, and we think that there's something very --
17 very comparable to this in our proposal already.

18 And again, in the verification, we would
19 have to deal with the CPM, the city, the county,
20 and so on.

21 We will skip HAZ-6, based on Ms.
22 Grueneich's statements.

23 There is no HAZ-7. I beg your pardon.
24 So CVRP has proposed no changes to HAZ-7, nor has
25 Staff. So HAZ-7 in the FSA stands.

1 And as to HAZ-8, again, the concurrence
2 of the City of San Jose and Santa Clara County
3 would be added to the list of routes to be used
4 for delivery of all of these materials.

5 As regards implementation of HAZ-3 on
6 all the -- the implementation of the first two
7 bulleted items on transporters of hazardous
8 materials I believe is already covered by law and
9 regulation. I don't believe we need to impose it
10 on anybody. We will simply require in our
11 contracts that they comply with all applicable
12 LORS.

13 The third bullet I think we -- I
14 probably need a clarification on the intent of the
15 language. And the fourth bullet, we have no
16 problem. In fact, I suspect that the transporters
17 are already required by law to have such response
18 plans for their services en route or at their
19 source facility. So again, a requirement they
20 comply with LORS would suffice.

21 So with those -- with those provisos, I
22 think our only remaining concern would be about
23 the number of agencies that would have to be
24 satisfied directly.

25 HAZ-9, CVRP proposes no changes to HAZ-

1 9, nor 10, nor does the Staff. Those stand.

2 HAZ-11. We have agreed with Staff's
3 proposal to incorporate the specific references to
4 dot MC-307.

5 There is -- there is a concern about the
6 specification dot MC-331. I don't at this moment
7 know what all of the differences are between the
8 tankers designed to 301 versus 307. I have been
9 informed that the fittings that are used on
10 anhydrous trucks are intentionally different from
11 the fittings used on aqueous trucks, to -- to try
12 to limit the possibility that a load of anhydrous
13 will be delivered and connected to an aqueous
14 facility that is not designed to handle the
15 pressure. We think that that was wise. So we --
16 we would prefer not to adopt this particular
17 requirement.

18 And HAZ-12 I believe is all new. It
19 goes to the issue of adopting a more dilute form
20 of aqueous. This would increase the frequency of
21 delivery, because each truck holds less ammonia in
22 the more dilute form. So the increased frequency
23 of delivery would, of course, go to all of the
24 issues associated with deliveries.

25 Alternatively, we would have to have

1 more onsite tankage, which, again, would change
2 the project configuration with all of the things
3 associated with having more tankage. It is
4 technically feasible.

5 HEARING OFFICER VALKOSKY: Do you have
6 an estimate as to how much that would increase the
7 frequency of deliveries?

8 (Inaudible asides.)

9 MR. DUNSTAN: It would increase the
10 delivery of frequency from approximately two
11 deliveries per week to three deliveries per week.

12 PRESIDING MEMBER LAURIE: And would you
13 have a estimate or guesstimate as to what such a
14 reduction in concentration would do to risk
15 reduction?

16 MR. DUNSTAN: The more dilute form --
17 let me ask one of our experts on hazardous
18 material.

19 PRESIDING MEMBER LAURIE: Thank you.

20 MR. DUNSTAN: Mr. Salamy.

21 MR. SALAMY: The -- the -- going to a 20
22 percent ammonia solution would not reduce any of
23 the regulatory requirements for the project. The
24 actual risk from the -- the higher concentration
25 that we're proposing is below the CEC thresholds

1 for significance, and are clearly well below the
2 federal levels. So going to a lower concentration
3 ammonia solution would reduce those risks a little
4 bit further down, and they were already
5 insignificant at this point. An actual number is
6 impossible to give at this time.

7 PRESIDING MEMBER LAURIE: Okay. Thank
8 you.

9 MR. DUNSTAN: HAZ-3, proposed by CVRP,
10 is entirely new and I believe it duplicates the
11 effects of HAZ-2 and HAZ-4, as changed. I -- I
12 beg your pardon, it's HAZ-13. We -- HAZ-12 was
13 the more dilute form, so HAZ-13 is -- it appears
14 to be redundant to HAZ-2 and HAZ-4. And again
15 brings in the issues of satisfaction of numbers of
16 agencies who may choose to --

17 HEARING OFFICER VALKOSKY: Okay.

18 MR. DUNSTAN: -- impose things we don't
19 like.

20 HEARING OFFICER VALKOSKY: Okay. Thank
21 you very much. I appreciate all of those
22 clarifications. I just have one more question
23 before we begin cross for the panel.

24 And one of the panel mentioned that
25 employees will be trained to first responder

1 status. Is that correct? Could you explain to me
2 what that really means, what does a first
3 responder do, what are their capabilities, and how
4 does that differ from the capabilities of, I
5 believe the term is a hazardous incident team?

6 MR. TORNATORE: Okay. Well, a first
7 responder level is -- is a level where they
8 receive some training in the -- the recognition of
9 -- of the incident, there is -- there is a
10 problem, and they are to secure and get people to
11 move themselves away from it, go inside. They
12 have to have an understanding of what the
13 hazardous substances are. They also have an
14 understanding of what the potential outcomes might
15 be with -- with an emergency. And they have the
16 ability to identify the hazardous substances, or
17 at least they're given some training in that area.

18 The Hazardous Incident Team is the fire
19 department's team of people that are on their
20 staff, they're firemen that are extremely trained
21 in a variety of hazardous incidences and a variety
22 of materials that might be there. I -- they go
23 through that training almost continuously.

24 HEARING OFFICER VALKOSKY: Okay. So a
25 layman's way of looking at it, is it fair to

1 conclude that the workmen who would be trained as
2 the first responders would be capable of
3 recognizing when there is a problem or a potential
4 problem, but it would be the Hazardous Incident
5 Team that in fact remedies that problem?

6 MR. TORNATORE: No. Well, it depends on
7 the seriousness of the situation. If outside
8 assistance was needed, you'd bring in the
9 Hazardous Incident Team from the fire department.
10 The next level, the operations level, would have
11 the training of -- they would know how to select
12 the proper equipment, protection equipment to
13 approach the -- the release site or the basic
14 controls of controlling the release. And also, to
15 know when and how much to bring in outside
16 assistance, if necessary.

17 HEARING OFFICER VALKOSKY: Okay. Now,
18 these would be operational personnel trained in --

19 MR. HARRIS: Mr. Valkosky, can I --

20 HEARING OFFICER VALKOSKY: -- that
21 level?

22 MR. HARRIS: -- suggest a clarification?

23 HEARING OFFICER VALKOSKY: Certainly.

24 MR. HARRIS: Mr. Tornatore identified
25 two first responder levels. There's a first

1 responder awareness, which I think was his primary
2 description there, and there's also a first
3 responder operations. Those are both plant
4 personnels at different levels of training. And
5 so different plant folks would have different
6 skills. And -- and then the outside agency is the
7 Hazardous Incident Team. So --

8 HEARING OFFICER VALKOSKY: Okay.

9 MR. HARRIS: -- it's confusing, because
10 they're both called first responders, but they
11 have different levels of training.

12 HEARING OFFICER VALKOSKY: Right. And
13 -- and fundamentally, what I'm looking for is what
14 level of response will the operational personnel
15 be capable of?

16 MR. HARRIS: What level of response?

17 HEARING OFFICER VALKOSKY: Yeah, or --
18 or containment, or hazardous --

19 MR. TORNATORE: They would know how to
20 perform the basic control and containment or
21 confinement of -- of the release.

22 HEARING OFFICER VALKOSKY: Okay. Is
23 there a specific point at which they would have to
24 call in the Hazardous Incident Team from the fire
25 department?

1 MR. TORNATORE: Well, part of their
2 training is to recognize -- recognize that.

3 HEARING OFFICER VALKOSKY: Okay. So
4 they -- they would be qualified to recognize that
5 point, then.

6 MR. TORNATORE: Yes.

7 HEARING OFFICER VALKOSKY: Rather than
8 having it, I assume, get out of control onsite.

9 MR. TORNATORE: Yes.

10 HEARING OFFICER VALKOSKY: Thank you.

11 MR. SMITH: I do have one question on
12 the proposed HAZ-10 language.

13 MR. HARRIS: Is it our proposed change
14 or CVRP's proposed change?

15 MR. SMITH: Oh, I'm sorry. Applicant's
16 proposed change.

17 MR. HARRIS: Thank you.

18 MR. SMITH: It would seem that the
19 change -- there's added specificity in the
20 language regarding fuels and lubricants, and the
21 combustible or flammable language has been
22 deleted. It seems that's a narrowing of the
23 language. What other combustible or flammable
24 materials, other than the fuels or lubricants,
25 might be stored on the site and might come in

1 conflict with this, that we should be concerned
2 about?

3 MR. TORNATORE: That's basically all
4 there is.

5 MR. SMITH: Well --

6 MR. DUNSTAN: Let me respond, and the
7 underlying reason for our desire to change the
8 language. The -- the term combustible is so broad
9 it could include cardboard boxes, clothing, any --
10 basically any hydrocarbon material. Anything that
11 was not completely inert is combustible. And
12 keeping all such things 100 feet from the tank
13 would basically create an exclusion zone that
14 would be a significant hindrance to operation and
15 maintenance, with no contribution to safety. We'd
16 be prohibited from driving a forklift truck past
17 this reinforced concrete box with the tank in it.

18 So we wanted to -- to clarify the
19 concern, which was that there would be a
20 significant fire source in close proximity to the
21 sulfuric acid tank. We would not want to do that
22 either. We have no intention of doing that. This
23 would simply codify it.

24 MR. SMITH: So, just so I understand.
25 There are no other flammable or combustible

1 materials other than the fuels and lubricants that
2 would be used onsite.

3 MR. DUNSTAN: The insulating oils used
4 in the electrical transformers, potentially
5 combustible. The maintenance facilities will have
6 small amounts of solvents, cleaning materials,
7 perhaps small cans of sprays. Those will all be
8 stored in fire lockers in accordance with fire
9 code in protected areas. Things as mundane as
10 paper from the offices.

11 HEARING OFFICER VALKOSKY: Okay. Thank
12 you.

13 Staff, cross examination?

14 MS. WILLIS: Actually, I just had one
15 point of clarification.

16 CROSS EXAMINATION

17 MS. WILLIS: When Mr. Harris was reading
18 the list of proposed conditions from Staff, the
19 changes to the conditions, he left out HAZ-1
20 change. And I just want to clarify with you, Mr.
21 Dunstan, if that's acceptable to the Applicant as
22 well as the rest of the changes.

23 MR. DUNSTAN: Yes, it is.

24 MS. WILLIS: Okay. Thank you. That's
25 all we have.

1 HEARING OFFICER VALKOSKY: Ms. Dent, on
2 behalf of the City.

3 MS. DENT: Thank you. I would like to
4 briefly do Traffic and Transportation first, and
5 then a couple questions on Haz Mat.

6 CROSS EXAMINATION

7 MS. DENT: On Traffic and
8 Transportation, just so that I understand clearly
9 the -- the layout of the facility, it's my
10 understanding that the access, there's only one
11 access road proposed to the facility, and that
12 access is across the Union Pacific Railroad
13 tracks. Is that accurate?

14 MR. DUNSTAN: Our proposal includes
15 initially the access road cross the UP Railroad
16 tracks, but we have committed to build what we've
17 called the Western Access Road, as we discussed
18 the other night, if and when dedicated streets are
19 available to that vicinity of our property.

20 MS. DENT: So, now, are you aware that
21 the San Jose Public Works Department and the San
22 Jose Fire Department both ask that Calpine be
23 required to improve that public street and that
24 secondary access to the site?

25 MR. DUNSTAN: I'm not aware that the

1 city was requesting that we improve any streets
2 that are proposed as part of the CVRP development.

3 MS. DENT: I want -- I want to ask you
4 take a look at some language in a -- in a document
5 prepared by our Public Works Department to our
6 Planning Department, and I'm not asking you if
7 you've seen this document before.

8 MR. HARRIS: Can -- can I see the
9 document?

10 MS. DENT: I'm going to -- yeah, I'm
11 going to hand it out in a minute. I'm going to
12 ask --

13 MR. HARRIS: Can I see --

14 MS. DENT: -- yeah, I will. I just --
15 can I finish?

16 MR. HARRIS: Actually I'd like to see
17 it, so I can read along with you.

18 MS. DENT: I'm not going to read it
19 right now.

20 MR. HARRIS: Okay. I'm --

21 MS. DENT: I'm just going to --

22 HEARING OFFICER VALKOSKY: All right.
23 Let's let Ms. Dent finish.

24 MS. DENT: I'm just going to ask you to
25 read it. I'll ask your attorney to read it also,

1 and then I'll ask you a question about the
2 document. Okay? And I'll pass it out to
3 everybody else.

4 HEARING OFFICER VALKOSKY: Thank you.

5 (Inaudible asides.)

6 MS. DENT: Yes. For the record, I'm
7 going to be using two documents, one with the
8 Transportation team and one with the Haz Mat team.
9 And when I stapled them together, I stapled them
10 together, but I'll try to hand them out separately
11 to them. But I'll make sure everybody has both of
12 them. So this is --

13 (Inaudible asides.)

14 MS. DENT: The language that I'm going
15 to be asking you about first is the -- oh, my
16 goodness, I thought I made enough for everybody.
17 No, I didn't --

18 MR. HARRIS: Do you want to object?

19 HEARING OFFICER VALKOSKY: Let's --
20 let's go off the record until we get this sorted
21 out.

22 (Off the record.)

23 MS. DENT: For the record, I will say
24 that this -- that these documents are actually
25 docketed as part of the record. They're part of

1 Ken Edens' testimony. They were part of the
2 Planning -- they're part of the Planning
3 Department's report to the City Council on the
4 land use action on Metcalf Energy Center.

5 HEARING OFFICER VALKOSKY: Okay. Now,
6 am I to understand that these are part of the
7 testimony the city docketed and the Commission
8 proceeding --

9 MS. DENT: Yes.

10 HEARING OFFICER VALKOSKY: -- for Land
11 Use?

12 MS. DENT: Yes.

13 HEARING OFFICER VALKOSKY: Thank you.

14 MS. DENT: Now, what I'm -- all I'm
15 going to ask you to do, though, with this
16 document, having -- assuming that you have not
17 seen it before, I'll assume that. I'd like you to
18 read the section 5B regarding Transportation.

19 MR. DUNSTAN: I've read it.

20 MS. DENT: And I would like to ask you
21 if the Metcalf Energy Center will -- is physically
22 going to comply with that section. Will the
23 improvements that are referred to in that section
24 be provided?

25 MR. DUNSTAN: We will -- we will obtain

1 a crossing permit from the UP Railroad. I'm not
2 certain about the timing of securing the permits.
3 we're actively working with UP to have all of
4 those in hand before -- actually, as quickly as
5 possible.

6 Regarding the temporary nature of the
7 crossing, the -- the existing crossing is -- is
8 the property of another landowner. It exists
9 under a title arrangement that is perpetual, and
10 it's -- it means exactly what it says. So we will
11 not be able to compel the other property owners
12 that use that crossing to cease using it. Others
13 may be able to, but we -- we can't do that.

14 MS. DENT: Is CVRP going to continue to
15 use it permanent -- I'm sorry. Is Calpine going
16 to continue to use it permanently?

17 MR. DUNSTAN: We've stated that once we
18 are able to build what we've called the Western
19 Access Road, that we will use that Western Access
20 Road as our primary access and that the original
21 access road through the grade crossing would be
22 left in place at the request of the San Jose Fire
23 Department, as an emergency access.

24 MS. DENT: And so you're going to keep
25 the Union Pacific Railroad crossing as a second

1 point of access to the property, per the fire
2 department's request.

3 MR. DUNSTAN: Once the crossing is in
4 place, it will -- it is our intent that it remain
5 in place as an emergency access for the fire
6 department.

7 MS. DENT: And so you understood that
8 the fire department wanted two points of access.
9 Is that accurate?

10 MR. DUNSTAN: We understood that to be
11 their request.

12 MS. DENT: And now, reading the Public
13 Works Department memo, specifically the sentence,
14 the developer shall dedicate and improve a public
15 street to the south -- southern -- southwestern-
16 most portion of their property, the -- that is not
17 proposed by Calpine for Metcalf Energy Center, is
18 it?

19 MR. DUNSTAN: Our proposal is consistent
20 with the next sentence, which says we will prepare
21 -- let me paraphrase -- that we would include in
22 our -- in our proposal a -- a road connecting from
23 the southwestern corner of our property to the
24 nearest point of connection with the CVRP road
25 system. And that we would design and build that

1 as soon as we could secure the rights-of-way and
2 the CVRP street were dedicated to that nearest
3 point. That is what we've proposed.

4 MS. DENT: So until the CVRP development
5 is complete, whenever that happens, there will be
6 only one point of access to the Metcalf Energy
7 Center project. That will be across railroad
8 tracks, across Union Pacific Railroad tracks. Is
9 that correct?

10 MR. DUNSTAN: Yes.

11 MS. DENT: And there will not be two
12 points of access as requested by the fire
13 department. Accurate?

14 MR. DUNSTAN: There will not be two
15 streets.

16 MS. DENT: For emergency vehicle access.
17 There will not be two streets to access the
18 project.

19 MR. DUNSTAN: The alternative emergency
20 access that we've discussed with both public works
21 and the fire department is the farm roads that the
22 fire department would currently use to respond to
23 fires and other emergencies in the properties that
24 are already in the Coyote Valley.

25 MS. DENT: Now, if -- if -- let's assume

1 for a moment that the city's position is that
2 local rules and standards require two points of
3 access to this project. Let's just assume that
4 that's the city's interpretation of local --

5 MR. HARRIS: Is this a hypothetical, or
6 are you positing a --

7 MS. DENT: No.

8 MR. HARRIS: -- specific --

9 MS. DENT: It's a hypothetical. Let's
10 assume --

11 MR. HARRIS: You're not positing a
12 specific city ordinance or regulation.

13 MS. DENT: Well, let's -- let's say that
14 -- this -- this -- the language that we've just
15 read indicates that the city asked for a permanent
16 -- second permanent point of access to be
17 provided.

18 MR. HARRIS: And I'm just seeking
19 clarification of the question.

20 MS. DENT: I --

21 MR. HARRIS: And the clarification is --

22 MS. DENT: Let's assume that their
23 asking for the second point of access is pursuant
24 to local rules, regulations, laws, and standards.
25 Let's assume that it is. The Metcalf Energy

1 Center is not going to provide that second point
2 of access. It is going to rely on that second
3 point of access to be provided by some other
4 developer at some point in the future. Is that
5 accurate?

6 MR. DUNSTAN: The second access would be
7 by the existing farm roads in the area.

8 MS. DENT: Now, do you have any easement
9 over the existing farm roads to provide that
10 access?

11 MR. DUNSTAN: I have been told that with
12 our acquisition of the property, we acquired the
13 use of the existing common access easements that
14 border all of the parcels in Coyote Valley from
15 the time they were defined as farms.

16 MS. DENT: Let's go now to the memo from
17 the fire department.

18 MR. HARRIS: Is this -- is this your
19 second document?

20 MS. DENT: Yes. That's the second
21 document. And I'd like to direct your attention
22 first to page 2, and I hope this one has some
23 pages on it. Page 2, condition numbered 3.

24 MR. HARRIS: Can you provide the context
25 for this document, as well? Is this something

1 that was also provided to the city council and --

2 MS. DENT: Yes. This was also part of
3 the report to the city council --

4 MR. HARRIS: And was it --

5 MS. DENT: -- on the Metcalf Energy
6 Center project.

7 MR. HARRIS: -- was it developed
8 specifically for the city council consideration of
9 the Metcalf project, or was it developed
10 independently?

11 MS. DENT: Well, on the first page of it
12 it says Metcalf Energy Center. It's for the PD,
13 pre-zoning --

14 MR. HARRIS: I'm just seeing it for the
15 first time. Thank you. And was this provided to
16 our folks, do you know?

17 MS. DENT: I believe that the -- I don't
18 -- I don't know whether this particular document
19 was, but I'm going to ask him similar questions on
20 this document that I asked him on the others.

21 MR. HARRIS: Was this provided for the
22 decision-makers, or was it background, is it a
23 decision document or is it background information?
24 What -- what precisely is the purpose of the memo?
25 Is it a routinely produced -- I just want to

1 understand the context.

2 MS. DENT: The -- this -- these
3 particular memos are part of the city's process
4 for considering development conditions for
5 approval for a project.

6 MR. HARRIS: Okay. So any development
7 within the --

8 MS. DENT: This information would have
9 been provided --

10 MR. HARRIS: -- city of --

11 MS. DENT: -- to Metcalf Energy Center
12 in response to their development application. As
13 you can see from the timing of the document, it --
14 there were revisions made to it, and if you look
15 at the date line at the top --

16 MR. HARRIS: Yeah. I see.

17 MS. DENT: So this would have been part
18 of the city's consideration of Metcalf Energy
19 Center's application to the city.

20 MR. HARRIS: So -- so my question,
21 though, was is this a document -- not this
22 document, a document like this routinely produced
23 for the council?

24 MS. DENT: Routinely.

25 MR. HARRIS: Okay. Thank you.

1 MS. DENT: Looking at Number 3 on the
2 document, an unobstructed access road satisfactory
3 to the San Jose Fire Department, and a proposed
4 access road as a secondary emergency route and not
5 as primary egress.

6 Again, does the project have two access
7 roads, one secondary and one primary? If CVRP
8 doesn't develop.

9 MR. DUNSTAN: In our view there will
10 always be two means of access to the project until
11 dedicated streets are built by CVRP or some other
12 developer. There would be an access over the
13 railroad crossing, and there would be access for
14 emergency vehicles over the farm roads, as is
15 currently the case, once dedicated streets are
16 built as part of CVRP or some other development.

17 MS. DENT: But not necessarily when the
18 project commences operation.

19 MR. DUNSTAN: That's correct.

20 MS. DENT: And maybe not at all, if CVRP
21 doesn't develop.

22 MR. DUNSTAN: That is correct.

23 MS. DENT: And now, can we -- can you
24 take a look for me, please, at the bottom of page
25 numbered 4 of Mr. Chew's letter, which sets out

1 items number A, B, and C, for general requirements
2 for emergency vehicle access.

3 MR. HARRIS: I'm sorry. Where are we
4 now?

5 MS. DENT: On page 4 of Mr. Chew's memo.

6 MR. HARRIS: Of the second document?

7 MS. DENT: Yes.

8 MR. HARRIS: Page 4?

9 MS. DENT: Uh-huh. Items A, B, and C.

10 MR. HARRIS: Page 4, not item 4.

11 MS. DENT: Page 4. The four is very
12 light. It's --

13 MR. HARRIS: Okay. I'm sorry. I can
14 see it.

15 MS. DENT: To your knowledge and
16 information, do either one of the access routes --
17 well, first of all, does the access route over the
18 Union Pacific Railroad tracks meet this kind --
19 meet the emergency vehicle access standards set
20 forth in items A, B, and C?

21 MR. DUNSTAN: Yes.

22 MS. DENT: Do the farm roads meet that
23 requirement?

24 MR. DUNSTAN: I believe they do.

25 MS. DENT: Turning radius of 30 feet

1 inside and 50 feet outside?

2 MR. DUNSTAN: I believe they do. Those
3 -- those easements are all 30 feet wide.

4 MS. DENT: And it's your testimony that
5 Calpine actually will have easements for those
6 roads before construction begins?

7 MR. DUNSTAN: I have been told that as a
8 property owner in the valley, that we have the
9 right to use the common access easements that
10 border every property in the valley.

11 MS. DENT: Who -- you've been told that,
12 that you have the right to use common access
13 easements over other people's property.

14 MR. HARRIS: I'm going to --

15 MR. DUNSTAN: That --

16 MR. HARRIS: -- I'm going to object on
17 the basis that the question is assuming facts that
18 aren't in evidence. And the facts that aren't in
19 evidence is to whether easements are required for
20 emergency, and -- and that's the key word,
21 emergency access. We're not talking about
22 permanent access for transportation. And I don't
23 know that we've established that easements are
24 available -- or are required for that kind of
25 emergency access. If you want to build a

1 foundation for that, that's a different matter.

2 MS. DENT: Well, I'm asking -- I'll ask
3 it a different way, then.

4 Do you have any written evidence to
5 present indicating that -- or demonstrating that
6 Calpine has a second route of access that meets
7 these requirements for emergency vehicle access to
8 your project? Any written documentation to
9 indicate that.

10 MR. DUNSTAN: None that I'm aware of.

11 PRESIDING MEMBER LAURIE: Excuse me, Ms.
12 Dent. Mr. Harris.

13 MR. HARRIS: Yes, sir.

14 PRESIDING MEMBER LAURIE: I have to go
15 back to your comment. Are you suggesting that if
16 you own a lot separated from a public roadway by
17 another lot not owned by yourself, and some rule
18 required emergency access from -- from the county
19 roadway to your lot, that you could take the
20 position well, the lot next to you or the lot
21 adjacent to you and adjacent to the highway is a
22 vacant lot, the fire department can just use that?

23 MR. HARRIS: No, sir. I'm not
24 suggesting that. Let me clarify.

25 What I was suggesting, on the -- on the

1 narrow issue of an easement, a real property
2 interest that would be required, and that --
3 that's the narrow -- narrow focus of that, is
4 there a real property interest requirement for
5 emergency access. And I don't know the answer to
6 that. That's different than whether other LORS
7 would comply, or require other access.

8 And so I -- I was focused solely on the
9 narrow question of an easement. And again, an
10 easement as a real property interest, not as a way
11 to get in and off.

12 PRESIDING MEMBER LAURIE: Well, I think
13 I understand that. And I guess my -- my question
14 is how would you think that an easement is not
15 necessary, if you're going to use somebody else's
16 property for the purpose of adding benefit to
17 yours, how would you not -- I mean, I'm -- I don't
18 know if I've recently looked at this question.
19 But I don't know how you would not require an
20 easement.

21 MR. HARRIS: Let me clarify it for other
22 -- I think the foundation question asked the
23 witness to assume applicable LORS that required
24 some sort of access. And that assumption I think
25 was key to the question.

1 PRESIDING MEMBER LAURIE: Okay. That's
2 fine. Thank you.

3 MS. DENT: So we can clarify that, then.
4 It's your interpretation of local rules and
5 ordinances that an access point to an industrial
6 facility, such as Metcalf Energy Center, across a
7 railroad track that might be blocked when
8 railroads -- when railcars are on the line, is
9 adequate; that one single point of access under
10 all local applicable rules and standards is
11 compliant?

12 MR. DUNSTAN: Yes.

13 MS. DENT: Now, in terms of looking at
14 local standards and rules, I -- I do have a
15 question, not terribly big, on Traffic. It's a
16 little bigger on Haz Mat.

17 What local rules and ordinances did you
18 look at? You're aware that the Metcalf Energy
19 Center site is in both the county and the city.
20 Did you look at both county and city rules and
21 ordinances?

22 MR. HARRIS: Is your question directed
23 to Haz Mat?

24 MS. DENT: No. I am asking it on
25 Traffic, just because I'm trying to figure out

1 which LORS you decided they were -- no, I'm asking
2 it on Traffic. Which -- I mean, on Haz Mat. I'm
3 asking it on Haz Mat, specifically. Which LORS
4 you determined they were to be compliant with?

5 MR. TORNATORE: By citation of each
6 code, or --

7 MS. DENT: No. I'm just -- it's a
8 question really for both teams. When you looked
9 at your LORS compliance, did you look at both
10 county and city LORS, or did you just look at one
11 or the other?

12 MR. TORNATORE: Both.

13 MS. DENT: So you looked at both. Do
14 you know if there were any differences between
15 city and county LORS on Haz Mat?

16 MR. TORNATORE: I recall that the City
17 of San Jose has Ordinance 25838, which has some
18 different requirements.

19 MS. DENT: So for the portion of the
20 project that's in the City of San Jose, you're
21 going to comply with that one, but not for the
22 portion of the project that's in the county, or
23 does it not make any difference?

24 MR. DUNSTAN: In the hypothetical in
25 which the project is, in fact, part unincorporated

1 and part in the city, the --

2 MS. DENT: We understand that's the
3 current situation.

4 MR. DUNSTAN: In the hypothetical, it
5 ends up that way. It doesn't make sense to
6 specify a division. We would adhere to the more
7 stringent of the requirement and apply it
8 consistently through the project.

9 MS. DENT: And so that is your
10 testimony, that the project has been designed to
11 the more stringent of the two requirements.

12 MR. DUNSTAN: It is our commitment that
13 it will be designed to the LORS that are
14 applicable to the project at the time it goes into
15 design.

16 MS. DENT: And to such LORS as may be
17 adopted thereafter during operation.

18 MR. DUNSTAN: To the extent that they
19 become applicable to existing facilities, the law
20 would require us to comply.

21 MS. DENT: Okay. And I'll -- I'd like
22 to ask the same question on Traffic, whether or
23 not they looked at both county and city
24 requirements.

25 MS. ACUTANZA: Yes, we did.

1 MS. DENT: And did you find any
2 differences between county and city requirements?

3 MS. ACUTANZA: There were -- the city
4 does comply with the county, Santa Clara County's
5 congestion management plan. So to that degree, we
6 follow Santa Clara County's congestion management
7 plan.

8 MS. DENT: Okay. All right. I want to
9 go back very -- very briefly on the Haz Mat topic.
10 And I would like to ask you to put the change back
11 up. I don't have it, so -- the change in the
12 condition.

13 I have the same question that one of the
14 Commission members had, which relates to the fuels
15 or lubricants. The fire code generally does use
16 the language of combustible or flammable
17 materials, in -- in terms of many types of
18 storage. And this goes back to the question I
19 asked earlier.

20 Is it your contention that the project
21 will comply with local ordinance requirements for
22 Haz Mat storage, including requirements for
23 storage of combustibles and flammables other than
24 fuels and lubricants?

25 MR. DUNSTAN: Yes.

1 MS. DENT: There was some discussion
2 earlier of the conditions, additional conditions
3 of certification that CVRP had offered. And there
4 seemed to be, on your part, some concern with
5 submitting plans in advance for your Haz Mat
6 storage and for your RMPP and emergency response
7 plan to the city.

8 MR. DUNSTAN: That's not correct. The
9 concern is maintaining the -- the CEC's
10 jurisdictional position through their Compliance
11 Project Manager. So that essentially the
12 determination as to the applicability of the LORS
13 and the compliance of our project would be
14 determined by the CPM.

15 MS. DENT: I want to follow that up a
16 bit. In terms of substantive compliance with the
17 fire code, though, or with the hazardous materials
18 storage ordinance or the toxic gas storage
19 ordinance that the city has, or the county has,
20 one of those agencies, either the city or the
21 county, will be the enforcing agency for those
22 codes, once your project becomes operational. Is
23 -- is that correct?

24 MR. HARRIS: I'm going to object on the
25 basis that I think you're asking him to make an

1 assumption about which permits and enforcement
2 authorities are subsumed by the Energy Commission
3 process, and which are not.

4 MS. DENT: I'm asking him about -- I'm
5 not asking about permits. I'm asking about an
6 inspector goes out and inspects the facility, and
7 says your Haz Mat -- during operation, your --
8 this is stored too close to that. Move it.

9 MR. HARRIS: Whose inspector? I'm
10 sorry.

11 MS. DENT: Well, I'm asking him that.
12 What's his understanding --

13 HEARING OFFICER VALKOSKY: I think the
14 witness can answer to the best of his knowledge.
15 I'd also advise Ms. Dent to address a similar
16 question to the Staff witness.

17 MS. DENT: I will.

18 HEARING OFFICER VALKOSKY: Okay.

19 MR. DUNSTAN: My understanding, based on
20 my experience in dealing with CEC compliance on
21 two projects, and in reading the general
22 compliance conditions for the Metcalf Energy
23 Center, is that the Energy Commission will
24 determine which agencies -- the agencies to which
25 it will delegate enforcement authority. And the

1 project owner will be accountable to the
2 enforcement authority assigned by the Energy
3 Commission through the Compliance Project Manager.

4 MS. DENT: Now, will that be enforcement
5 authority throughout the life of the project? In
6 your understanding.

7 MR. DUNSTAN: My understanding is that
8 the project will be subject to the authority of
9 the delegate agency, if not the CEC itself, that
10 is assigned enforcement authority for the project.

11 MS. DENT: And what is your
12 understanding of the possibilities for that
13 delegate agency? Is that generally a local agency
14 or a state agency?

15 MR. DUNSTAN: Generally, that is a local
16 agency.

17 MS. DENT: So that a local agency would
18 be responsible for inspecting the project for
19 compliance with all applicable laws through the
20 life of the project, generally speaking?

21 MR. DUNSTAN: I would expect that to be
22 correct.

23 MS. DENT: So with that in mind, don't
24 you think it would be a good idea that the local
25 agency look at the plans for storage and for other

1 processes before the project is built?

2 MR. DUNSTAN: Let me clarify my
3 intentions in responding to the Hearing Officer
4 and Commissioner Laurie. We don't object to
5 submittal of anything related to our project to
6 cognizant local agencies. Our only concern is
7 that the CEC Compliance Project Manager retain the
8 authority to make the determinations as to
9 applicability of LORS and to the conformance of
10 our project.

11 MS. DENT: And will that process, as you
12 understand it, continue throughout the life of the
13 project?

14 MR. DUNSTAN: Yes.

15 MS. DENT: Just one moment, and I'll
16 check my notes.

17 (Pause.)

18 MS. DENT: That's all I have. Thank
19 you.

20 HEARING OFFICER VALKOSKY: Thank you,
21 Ms. Dent.

22 Is there a representative from the City
23 of Morgan Hill?

24 Seeing none, Ms. Grueneich, on behalf of
25 CVRP?

1 MS. GRUENEICH: Thank you.

2 MR. HARRIS: Mr. Valkosky, before we
3 start, could we have just a five minute break for
4 obvious reasons?

5 HEARING OFFICER VALKOSKY: All right,
6 fine.

7 MR. HARRIS: Literally five.

8 (Off the record.)

9 HEARING OFFICER VALKOSKY: Your cross,
10 Ms. Grueneich.

11 MS. GRUENEICH: Thank you.

12 CROSS EXAMINATION

13 MS. GRUENEICH: Let me first start, Mr.
14 Dunstan, if I could. Have you testified
15 previously as an expert on Hazardous Materials?

16 MR. DUNSTAN: No.

17 MS. GRUENEICH: Have you personally
18 prepared a quantitative risk assessment for the
19 transportation of hazardous materials?

20 MR. DUNSTAN: No.

21 MS. GRUENEICH: And I hope I have the
22 pronunciation right. Is it Mr. Salamy?

23 MR. SALAMY: That's correct.

24 MS. GRUENEICH: Okay. Have you
25 testified previously as an expert on hazardous

1 materials?

2 MR. SALAMY: No, I have not.

3 MS. GRUENEICH: Have you personally
4 prepared a quantitative risk assessment for the
5 transportation of hazardous materials?

6 MR. SALAMY: No, I have not.

7 MS. GRUENEICH: Normally at this time I
8 would continue and probably move to strike, but in
9 the interest of moving ahead and avoiding a fight,
10 I think what I'll do is reserve my right that the
11 rebuttal testimony on Hazardous Waste -- on
12 Hazardous Materials goes to the weight to which
13 the testimony is given. These are, my
14 understanding is, the two witnesses who are
15 sponsoring that testimony.

16 MR. HARRIS: I'm not clear on what your
17 -- motion to strike what?

18 MS. GRUENEICH: I was saying that
19 normally, when I have heard that the witnesses
20 have not testified in the area in which their
21 testimony is in, nor have they prepared a analysis
22 of the type that they are critique-ing, I would
23 move to strike. But in the interest of not having
24 a prolonged debate --

25 MR. HARRIS: Is that the problem?

1 MS. GRUENEICH: -- what I'm suggesting
2 is that I will raise it later as to the weight to
3 be given to the testimony.

4 MR. HARRIS: Can I --

5 HEARING OFFICER VALKOSKY: Okay. I
6 think that's an appropriate way. Any response,
7 Mr. --

8 MR. HARRIS: Just -- can I have a moment
9 to --

10 HEARING OFFICER VALKOSKY: -- Harris?

11 MR. HARRIS: -- confer with my witness.

12 (Pause.)

13 HEARING OFFICER VALKOSKY: Mr. Harris.

14 MR. HARRIS: Could I ask that Mr. Salamy
15 be given an opportunity to clarify his answer? I
16 think he was reading the question too literally,
17 so -- or the question was phrased too narrowly for
18 his --

19 MS. GRUENEICH: What -- I would suggest
20 that on redirect, if there needs to be additional
21 questions --

22 HEARING OFFICER VALKOSKY: Yeah, we
23 could -- we can do that on redirect. That's fine.
24 We don't have a motion to strike in front of us.

25 MR. HARRIS: Okay. That's fine. We can

1 do it then.

2 HEARING OFFICER VALKOSKY: Okay.

3 MS. GRUENEICH: I would like, if I
4 could, to ask whoever is the appropriate witness
5 on the Hazardous Material, to indicate -- we have
6 an illustrative diagram up on the screen, it is
7 not to scale, but simply illustrative. And what I
8 wanted to do was to clarify if whoever is the
9 appropriate witness could indicate what is the
10 proposed route for the transportation of ammonia.
11 And do we -- do you still have your --

12 HEARING OFFICER VALKOSKY: Okay. Just
13 for point of clarification, this is the same
14 illustrative diagram that we discussed two days
15 ago, I believe.

16 MS. GRUENEICH: Back in Noise. Yes,
17 that's correct.

18 HEARING OFFICER VALKOSKY: Thank you.

19 MS. GRUENEICH: And if you could --
20 whoever is doing it, if you could, for the record,
21 state the -- the names of the roads, because I
22 want to make sure that we're understanding that.

23 MR. DUNSTAN: Can you hear me?

24 All right. As far as the extent of this
25 map, the transportation route that we've described

1 followed truck route. Monterey Road is a
2 designated truck route in the area, and we would
3 anticipate that essentially all deliveries,
4 perhaps not every single one, but ammonia, the
5 aqueous ammonia, would be transported down
6 Monterey Road, to the location of the railroad
7 crossing at Blanchard Road, where there is a
8 signal traffic intersection, and that can be
9 identified by this cluster of objects which is the
10 existing homes. Blanchard Road is approximately
11 this alignment, but at the wide place, at Monterey
12 Road.

13 At that point, the transporters would
14 turn right off of Monterey Road, crossing the
15 railroad crossing, and then turn onto the proposed
16 new access road that would come down and enter the
17 project at approximately this alignment.

18 And once the Western Access Road is
19 constructed, and at the request of the city, this
20 road would -- would no longer be used for other
21 than emergency access, and the Western Access
22 Road, as we've described it, would follow an
23 alignment paralleling Fisher Creek at least a
24 hundred feet from the top of the bank, to
25 approximately this area, which is the end of what

1 is shown on the CVRP permit drawings as a cul-de-
2 sac, and I think at one time the name of the road
3 was designated as some -- Valentine something.
4 And then into the dedicated road system.

5 Now, from that point, the transport of
6 all of these materials would be -- would depend on
7 the transportation plan approved by the CPM, in
8 conjunction with -- with other agencies having
9 jurisdiction. Whether that would be down Monterey
10 Road via one of these new interchanges, or down
11 U.S. 101 through one of the new interchanges, and
12 then either to the CVRP roads or over to Santa
13 Teresa and this way, we don't know.

14 MS. GRUENEICH: Does the Applicant --
15 strike that.

16 Your last statement was that once the
17 Western Access Road is built -- and I apologize, I
18 knew you were describing that -- that at a certain
19 point, there are a couple of different routes that
20 could be used, and that as you understand it, this
21 is something that the CPM, the Contract Project
22 Manager, will designate.

23 Does the Applicant have any preference
24 as to which of those potential routes it would
25 like to use?

1 MR. DUNSTAN: No.

2 MS. GRUENEICH: Are there any
3 differences in risks, in your mind, between either
4 of those potential routes?

5 MS. ACUTANZA: No. No.

6 MS. GRUENEICH: I do have some questions
7 with regard to Exhibit 36, the rebuttal testimony.
8 Who should I address the questions to?

9 MR. DUNSTAN: Please address them to me,
10 and I may refer them to another member of the
11 panel.

12 MS. GRUENEICH: That's fine. Thank you.

13 On page 3 of your rebuttal testimony,
14 just above the Section B, you state that CVRP's
15 transportation risk assessment does not include
16 the, quote, assumptions, methodology, calculations
17 or procedures on which the analysis was based.
18 Correct?

19 MS. ACUTANZA: Correct.

20 MS. GRUENEICH: I --

21 MR. DUNSTAN: Pardon me. I'll refer
22 this question to Ms. Acutanza.

23 MS. GRUENEICH: I'm a little confused.
24 She's not listed as a sponsoring witness for this
25 testimony.

1 MR. DUNSTAN: Ms. Acutanza was one of
2 the contributors that prepared this testimony
3 under our direction, and we reviewed -- adopted
4 all of it.

5 MS. GRUENEICH: So should I assume she
6 is, in fact, a sponsoring witness?

7 MR. HARRIS: I think what we've got to
8 assume is that we've been asked to put on a panel,
9 and the panel, for purposes of cross, because the
10 subject matters here are interrelated, and we did
11 that, I think, at the -- our understanding was
12 that was the Commission's preference, and so
13 that's why the panel is here.

14 MS. GRUENEICH: Well, I guess my
15 question is, are there any of these questions
16 about this testimony that Mr. Dunstan is going to
17 be able to answer?

18 HEARING OFFICER VALKOSKY: Well, we --
19 we could hardly know that until we have heard the
20 questions.

21 (Laughter.)

22 MS. GRUENEICH: Okay. Well, it was a
23 pretty basic one, which was, is the statement,
24 this very broad statement, true. And I assume,
25 then, you're deferring to the other witness for

1 the answer.

2 HEARING OFFICER VALKOSKY: Yeah. Ms.

3 Grueneich, I think Mr. Harris has accurately
4 reflected the approach. Certainly to the extent
5 any of the witnesses can answer the question, I
6 believe that's the procedure that will be
7 followed.

8 MS. GRUENEICH: And is it your position,
9 whoever is going to answer the question, that you
10 cannot -- that because of the lack of inclusion of
11 assumptions, methodology, calculations, and
12 procedures, that you cannot understand the risk
13 assessment contained in the appendices to CVRP's
14 testimony.

15 MR. DUNSTAN: I will ask Ms. Acutanza to
16 respond.

17 MS. ACUTANZA: That's correct.

18 MS. GRUENEICH: If you could turn for a
19 moment to Appendix A in CVRP's testimony, which I
20 believe on the list of exhibits has been
21 identified as Exhibit 33.

22 MR. DUNSTAN: That's correct.

23 MS. GRUENEICH: And specifically to
24 Appendix A, page 2. Isn't it true that Appendix A
25 on page 2 states that in evaluating whether

1 ammonia -- whether the ammonia transportation risk
2 is significant, one must evaluate two numbers, and
3 that an equation to calculate these numbers is set
4 forth on the middle of the page and the bottom of
5 the page.

6 MS. ACUTANZA: Ask that again, please.

7 MS. GRUENEICH: Isn't it true that
8 Appendix A, page 2, states that in evaluating
9 whether ammonia transportation risk is
10 significant, one must evaluate two numbers, and
11 that equations to calculate those two numbers are
12 set forth on that page?

13 MS. ACUTANZA: Yes.

14 MS. GRUENEICH: Isn't it also true that
15 that on the bottom half of page 2, and the top of
16 page 3, the specific input variables to those two
17 calculations are set forth?

18 MS. ACUTANZA: The variables are
19 described.

20 MS. GRUENEICH: So your answer is yes?

21 MS. ACUTANZA: They're described, yes.

22 MS. GRUENEICH: And if we take the first
23 factor of the first equation shown on page 2,
24 which is T equals trips per year, and then we turn
25 to page 3, Section 1.1, is it not correct that it

1 specifies that for that factor, two assumptions
2 were used, a hundred and fifty trips per year for
3 a 20 percent solution, and a hundred trips
4 annually for a 30 percent solution.

5 MS. ACUTANZA: That number is given,
6 yes.

7 MS. GRUENEICH: And if we take -- turn
8 to page 4, Table 1. The assumptions for four
9 additional factors contained in the equation
10 listed on page 2, that is the factor L for length,
11 A for accident rate, P for accident probability
12 per year, and PD for population density per square
13 mile, those assumptions are also listed.

14 MS. ACUTANZA: There are numbers given
15 for those.

16 MS. GRUENEICH: So your answer is yes?

17 MS. ACUTANZA: There are numbers given
18 for those. Some of the information isn't sourced.
19 The accident rates don't give an idea of what --
20 what framework -- it says they got the information
21 from TASAS, but it doesn't tell which years or
22 what -- where the calculation came from.

23 MS. GRUENEICH: So --

24 MS. ACUTANZA: But the sources that lead
25 to that -- that number aren't provided.

1 MS. GRUENEICH: Let me ask the question
2 again, which is, is it not correct that Table A
3 provides the assumptions that were used in the
4 equations listed on page 2?

5 MS. ACUTANZA: It lists some of the
6 numbers, but it doesn't list the relating
7 assumptions leading to those numbers.

8 MS. GRUENEICH: So your answer is yes,
9 it does provide the assumptions, but what it does
10 not specify in that table is some underlying
11 explanation, additional data that led to the
12 listing of those assumptions.

13 MS. ACUTANZA: Right. Source
14 information.

15 MS. GRUENEICH: To your knowledge, did
16 the Applicant ever request such underlying data or
17 information?

18 MS. ACUTANZA: No.

19 MS. GRUENEICH: I have some questions
20 with regard to the first section of the rebuttal
21 testimony, and specifically Table 1. Who would be
22 the appropriate witness on that table? And I
23 apologize -- Exhibit 36. I know there's a couple
24 of rebuttal testimony.

25 MR. DUNSTAN: We're referring to Table 1

1 in Exhibit 36, which is Calpine/Bechtel's rebuttal
2 testimony. Is that correct?

3 MS. GRUENEICH: Right. Yes.

4 MR. DUNSTAN: I'll refer that to Mr.
5 Salamy.

6 MR. SALAMY: Yes.

7 MS. GRUENEICH: Thank you. Now, as I
8 understand Table 1, it's a list of facilities
9 within Santa Clara County that the Applicant is
10 claiming used or produce or emit ammonia. Is that
11 correct?

12 MR. SALAMY: Those are facilities in the
13 county that are in compliance with the federal
14 toxic release inventory requirements. Yes.

15 MS. GRUENEICH: And as a result of being
16 in compliance, it's your understanding that
17 therefore they are using, storing, producing, or
18 emitting ammonia?

19 MR. SALAMY: If -- if they are in
20 compliance with the requirement, yes.

21 MS. GRUENEICH: Okay. Do you know
22 whether any of the facilities listed on Table 1
23 are in the Coyote Valley?

24 MR. SALAMY: No.

25 MS. GRUENEICH: Okay. Do you know how

1 much ammonia any of them store or use?

2 MR. SALAMY: No, I do not.

3 MS. GRUENEICH: Do you know how they
4 store their ammonia?

5 MR. SALAMY: The OLS Agnews Facility at
6 the top of page 3 stores 15,000 gallons of
7 anhydrous ammonia.

8 MS. GRUENEICH: Okay. If -- I guess I
9 would request, if other of the panelists wish to
10 add information, perhaps they'd just speak up
11 directly.

12 PRESIDING MEMBER LAURIE: Ms. Grueneich,
13 they're doing fine. Just -- this is the process
14 that all witnesses have been following when they
15 work as a panel, and they will continue to do so.
16 So please ask your questions.

17 MR. DUNSTAN: I can supplement Mr.
18 Salamy's answer. Based on a conversation I had
19 with them this morning, Hill Brother Chemical,
20 which I mention in my summary, as listed on the --
21 the first page of Table 1, routinely stores up to
22 15,000 gallons of anhydrous ammonia, and up to
23 33,000 gallons of aqueous ammonia at the
24 concentration we intend to use at the Metcalf
25 Energy Center.

1 On the second page, about midway down
2 the table, we list the San Jose/Santa Clara Water
3 Pollution Control Plant. My understanding is that
4 they routinely store substantially more aqueous
5 ammonia than the Metcalf Energy Center has
6 proposed to use.

7 MS. GRUENEICH: Thank you. My specific
8 question was the knowledge, and maybe now you can
9 answer it since you've talked with folks, as to
10 the specific storage design requirements they're
11 using. You -- what you've indicated is some
12 information about the amount of the ammonia. And
13 my question was also do you know anything about
14 how they're storing it, in terms of the design
15 requirements.

16 MR. DUNSTAN: I know that the anhydrous
17 ammonia storage facility of the OLS Agnews
18 Facility is a single-wall pressure vessel inside a
19 concrete spill containment structure.

20 MS. GRUENEICH: And for any of the
21 others listed on Table 1?

22 MR. DUNSTAN: I recall that the facility
23 at the San Jose/Santa Clara Water Pollution
24 Control Plant is a similar design with a single-
25 wall tank and a spill containment.

1 MS. GRUENEICH: And when was that
2 structure built, the second one?

3 MR. DUNSTAN: I don't know.

4 MS. GRUENEICH: And with regard to the
5 Agnews, when was that structure built?

6 MR. DUNSTAN: My understanding is that
7 the Agnews Facility predates the Cisco
8 headquarters campus surrounding it. It is
9 approximately 12 years old.

10 MS. GRUENEICH: Is there a specific
11 witness to whom I should direct questions to with
12 regard to Exhibit 36, Section D, LORS?

13 MR. DUNSTAN: I'll refer those questions
14 to Mr. Tornatore.

15 MS. GRUENEICH: Are you familiar with
16 the San Jose 1999 Fire Code?

17 MR. TORNATORE: I have reviewed it.

18 MS. GRUENEICH: Fine. Are you familiar
19 with Article 80, Hazardous Materials?

20 MR. TORNATORE: It --

21 MS. GRUENEICH: Within that code.

22 MR. HARRIS: Could you provide copies of
23 those documents if you're going to ask the witness
24 questions regarding them, please? And counsel,
25 please, too.

1 MS. GRUENEICH: I guess I should ask, do
2 you -- do you have a copy of that with you?

3 MR. HARRIS: No.

4 (Inaudible asides.)

5 MR. DUNSTAN: Would you please repeat
6 the citation while we're gathering paper --

7 MS. GRUENEICH: Sure. The --
8 specifically the document that I have handed out
9 is the San Jose 1999 Fire Code, and the specific
10 section that I asked -- was referring to was
11 Section 80, entitled Hazardous Materials.

12 MR. DUNSTAN: Section 8.

13 MS. GRUENEICH: Eighty, 8-0.

14 MR. DUNSTAN: I'm sorry --

15 MS. GRUENEICH: Article --

16 MR. DUNSTAN: No, I'm -- I don't have --
17 I have 8,000.

18 MS. GRUENEICH: Then it's -- you are
19 correct, it's 8,000.

20 MR. DUNSTAN: Article 8001 -- is it the
21 highlighted portion on my -- your copy?

22 MS. GRUENEICH: You got that one --

23 (Laughter.)

24 MS. GRUENEICH: That's the one.

25 MR. DUNSTAN: Okay. I'd refer you to --

1 8001.3.2?

2 MS. GRUENEICH: Could you -- yeah. Why
3 don't you give us page number at the bottom, then
4 we'll be on the same page.

5 MR. DUNSTAN: We -- we have page 30.
6 This is page 31.

7 MR. HARRIS: I beg your pardon. The
8 cite again is 8001. -- okay, that's where we are.
9 Thank you.

10 MR. DUNSTAN: Yeah, we're there. We're
11 at that point.

12 MR. HARRIS: All right. We're looking
13 at 8001.3.2, entitled Hazardous Materials
14 Management Plan, and that's on page 31.

15 MS. GRUENEICH: Thank you. If you could
16 take a minute to review it, and my question to the
17 appropriate witness is, are you familiar with that
18 section.

19 MR. HARRIS: Can I ask one other
20 question while they're checking it. Is this the
21 most recent version of the -- the Fire Code?

22 MS. GRUENEICH: I believe so.

23 MR. HARRIS: Okay. I just wanted -- I
24 wanted to make sure that his previous review
25 hadn't been of a different document.

1 MS. GRUENEICH: But I did not consult
2 with Ms. Dean beforehand on that.

3 MR. HARRIS: Has it been amended since
4 last November? Okay, thank you.

5 MS. GRUENEICH: So my question was, are
6 you familiar with that section dealing with the --
7 that's entitled the Hazardous Material Management
8 Plan.

9 MR. TORNATORE: Yes.

10 MS. GRUENEICH: Great. Does that
11 section apply to the proposed power plant?

12 MR. TORNATORE: Yes.

13 MR. HARRIS: Yes. I'm going to -- you
14 beat me. I was going to object on the basis that
15 are you asking him whether this plan is superseded
16 by the Energy Commission's exclusive siting
17 jurisdiction?

18 MS. GRUENEICH: I -- I was very
19 simplistic, which is we've heard testimony that
20 the plant complies with all applicable LORS, and
21 all I was doing was trying to establish whether
22 this was one of the LORS that the Applicant
23 believes it is in compliance with.

24 MR. HARRIS: Okay. And --

25 HEARING OFFICER VALKOSKY: That --

1 that's a fair question. It's a straightforward
2 question. I think the witnesses are capable of
3 answering it.

4 MR. TORNATORE: I said yes.

5 MS. GRUENEICH: Great. If I could ask
6 you to turn to -- I'm trying to decide which of
7 the Conditions of Certification we should use.
8 Would it be appropriate to ask that the Staff
9 proposed amended conditions be marked as an
10 exhibit? If not, I can just refer to them. I
11 think that's the easiest document to use at this
12 time.

13 HEARING OFFICER VALKOSKY: Yeah. Let's
14 just refer to them. They're not -- my assumption
15 is that Staff wants to merely append this to its
16 existing testimony.

17 MS. GRUENEICH: Okay. That's fine.

18 Do you have before you the proposed
19 Conditions of Certification that the Staff passed
20 out earlier this week?

21 MR. TORNATORE: Yes.

22 MS. GRUENEICH: Okay. If I could direct
23 your attention to HAZ-2, and do you see the first
24 line, where there is a reference to a Risk
25 Management Plan.

1 MR. TORNATORE: Yes.

2 MS. GRUENEICH: Is the Risk Management
3 Plan that's referenced in that condition the same
4 as the Hazardous Material Mitigation Plan that is
5 specified -- the Hazardous Material Management
6 Plan that is specified in the San Jose Fire Code?

7 MR. TORNATORE: No.

8 MS. GRUENEICH: Is there anywhere, to
9 your knowledge, a proposed Condition of
10 Certification for the Metcalf project that
11 specifically requires preparation of a Hazardous
12 Material Management Plan?

13 MR. DUNSTAN: We need to caucus just a
14 moment -- one of our other advisors can --

15 (Inaudible asides.)

16 MR. DUNSTAN: We've -- we've been trying
17 to sort out the terminology here, because some
18 agencies use different terminology in documents
19 that are essentially the same. And our -- the
20 conclusion of our experts on the Hazardous
21 Materials and such believe that the content of
22 what the San Jose ordinance described as a
23 Hazardous Materials Management Plan is the same as
24 the -- the content and intent of what we know as a
25 Business Plan. And what we don't know is whether

1 this is appropriately addressed in Hazardous
2 Materials or in another area.

3 We have --

4 MS. GRUENEICH: Let -- let me ask a
5 follow-up question, which may -- may help, which
6 is, am I correct in understanding that the
7 Applicant does intend to comply with the
8 requirements of Section 8001.3.2 insofar as it
9 requires preparation of a Hazardous Material
10 Management Plan?

11 MR. DUNSTAN: Yes. And in fact, that
12 language is explicit in -- it's in the AFC, at
13 Section 8.12.7.3.2, under discussion of City of
14 San Jose LORS.

15 MS. GRUENEICH: Insofar as there is a
16 condition of certification that requires
17 preparation of a Risk Management Plan, and we've
18 -- and we have determines that this Hazardous
19 Material Management Plan is not the same plan,
20 would the Applicant have any objection to the
21 conditions specifying preparation of both plans?

22 MR. DUNSTAN: Refer the question to --
23 refer the question to Mr. Tornatore.

24 MR. TORNATORE: No. You have to do the
25 Hazardous Materials Management Plan, and we said

1 in the AFC that it would be done.

2 MS. GRUENEICH: Okay. Thank you.

3 I'm just about done, I believe. If I
4 could just have a moment to review my notes.

5 (Pause.)

6 MS. GRUENEICH: I have a question with
7 regard to the proposed Condition of Certification
8 HAZ-2. And the wording didn't change between the
9 Staff's original and their additional items to
10 that condition.

11 My question is, as I read HAZ-2, the
12 second sentence --

13 MR. HARRIS: I'm sorry. Is this as
14 proposed to be changed, or is it --

15 MS. GRUENEICH: There's no difference
16 between the two, but why don't we work off of --

17 MR. HARRIS: No, I think --

18 MS. GRUENEICH: -- the Staff proposed to
19 be changed.

20 MR. HARRIS: -- I think there is a
21 proposed change to HAZ-2.

22 MS. GRUENEICH: Oh, I'm sorry. There is
23 a change, but the part I'm asking question on
24 didn't change.

25 MR. HARRIS: Okay. So --

1 MS. GRUENEICH: Just so we're all on the
2 same page, let's use the Staff version that was
3 passed out this week.

4 MR. HARRIS: Thank you.

5 MS. GRUENEICH: Let me restart the
6 question, which is, as I read the second sentence
7 of that proposed condition, it specifies that the
8 project owner shall -- and I'm skipping the new
9 part, because that's not part of what I'm asking
10 about -- but shall include all recommendations of
11 Santa Clara County and the CPM in the final
12 document.

13 And then, if I also turn to the Staff's
14 testimony, which is Exhibit 7 from the FSA, and
15 specifically to page 165, under Conclusions and
16 Recommendations --

17 MR. HARRIS: This is of the FSA?

18 MS. GRUENEICH: Yes.

19 MR. HARRIS: Is that --

20 MS. GRUENEICH: One sixty-five. And --

21 MR. HARRIS: I don't -- is that the
22 right -- is that the right page, 265 maybe?

23 HEARING OFFICER VALKOSKY: One sixty-
24 five.

25 MS. GRUENEICH: One sixty-five.

1 MR. HARRIS: I think I'm there.

2 MS. GRUENEICH: In the Haz Mat section.

3 MR. DUNSTAN: We have it.

4 MS. GRUENEICH: Okay. Under Conclusions
5 and Recommendations, the -- I think it's maybe the
6 fourth sentence, states, To ensure adequacy of the
7 RMP the Staff's proposed Conditions of
8 Certification require that the RMP be submitted
9 for concurrent review by EPA, Santa Clara County
10 and Staff. In addition, Staff's proposed
11 Condition of Certification also require Santa
12 Clara County's acceptance of the RMP, and then it
13 continues.

14 My understanding, from the testimony
15 that was provided by the Applicant today, is that
16 it did not have a concern with having review by
17 the local authorities, such as Santa Clara County
18 or even the City of San Jose, but it did object to
19 having those entities actually have an approval
20 role in conditions.

21 I read here that there is a condition in
22 which Santa Clara County would be given an
23 approval role, and I -- further it's my
24 understanding that the Applicant has agreed to
25 that condition. Is the reason for that because --

1 or, I guess, let me step back and ask, are there
2 any other areas in which the Applicant would feel
3 comfortable with the local authority having more
4 than just a review role, but an actual approval
5 role in the area of Hazardous Material?

6 MR. DUNSTAN: We are agreeable to
7 whatever authority the Energy Commission
8 determines to be appropriate for the project.

9 MS. GRUENEICH: So that if in the
10 conditions there were roles given to local
11 agencies that went beyond review, the Applicant
12 would be comfortable with that?

13 MR. DUNSTAN: Yes.

14 MS. GRUENEICH: Thank you.

15 Those are all the questions I have.

16 Thank you.

17 HEARING OFFICER VALKOSKY: Thank you,
18 Ms. Grueneich.

19 Ms. Cord.

20 Mr. Wade. Is he present?

21 Mr. Scholz.

22 CROSS EXAMINATION

23 MR. SCHOLZ: These questions that I'd
24 like to start off with are in reference to Traffic
25 testimony.

1 Did your Traffic testimony analysis
2 include traffic impacts to the community in
3 regards to construction of the SBWR pipeline
4 extension to the MEC facility?

5 MS. ACUTANZA: Yes, it did.

6 MR. SCHOLZ: Could you summarize your
7 findings as to impacts to the community residents
8 and businesses due to the construction of the SBWR
9 pipeline?

10 MS. ACUTANZA: We looked at construction
11 impacts over the 18 to 20 months to construct
12 that. We determined that there would be
13 approximately 71 workers daily, with peak traffic
14 impacts of the construction workers of about 110
15 daily, with 55 during the peak construction
16 period, 55 during the peak -- in the peak hour.

17 We looked at construction impacts of
18 temporary closures and construction activities
19 along the facility, and have indicated a series of
20 mitigation measures, including development of a
21 traffic control plan that was -- that's overseen
22 by the county, Caltrans, and the city. The
23 county, Caltrans and the city.

24 MR. SCHOLZ: That seems a bit vague to
25 me. Is there anymore detail to -- I mean, how

1 impacted the community's going to be during the
2 construction of this SBWR route?

3 MS. ACUTANZA: It sort of depends on the
4 timing of construction. But in developing the
5 traffic control plan, the city, county and state
6 will take into account what construction is
7 ongoing and occurring at -- in their jurisdictions
8 at that time, and may determine -- may ask that
9 traffic reroute, or trucks, or deliveries reroute,
10 may ask that -- may require that employees park at
11 certain places, park -- or arrive off peak. So
12 there's a number of issues that the city, county
13 and state will take into account, depending on
14 when the construction is going to occur.

15 MR. SCHOLZ: Have the mitigation
16 measures been determined as of yet?

17 MS. ACUTANZA: Development of the plan
18 is a mitigation measure, and the -- the plan
19 itself has not been determined yet.

20 MR. SCHOLZ: Is there any economic
21 mitigation to impacts to businesses along this
22 route?

23 MS. ACUTANZA: No.

24 MR. SCHOLZ: Is there a determination as
25 to -- I think the way you -- you measure traffic

1 is a level of service --

2 MR. DUNSTAN: Excuse me. May we have
3 just a moment to confer?

4 MR. SCHOLZ: Oh, sure.

5 (Pause.)

6 MR. DUNSTAN: We caucused briefly to
7 make sure we give you a complete answer.

8 MS. ACUTANZA: Could you restate your
9 question?

10 HEARING OFFICER VALKOSKY: I believe the
11 question was, is there any economic mitigation
12 proposed for businesses along the pipeline route.
13 Is that correct, Mr. Scholz?

14 MR. SCHOLZ: And the answer was no to
15 that question.

16 HEARING OFFICER VALKOSKY: Right, was --
17 okay. Was that the question?

18 MS. ACUTANZA: However, the traffic
19 control plan would identify or try to minimize and
20 mitigate impacts to businesses by making sure that
21 access is provided during business hours, or -- or
22 making -- requiring that construction occur when
23 the businesses aren't in -- in operation.

24 MR. SCHOLZ: I think currently there's a
25 Condition of Certification that it's done at

1 night. Is -- is that your understanding, the
2 construction of the route?

3 MR. DUNSTAN: Let me answer it. I
4 believe the condition you've mentioned, because we
5 discussed it a couple nights ago, it was -- it was
6 under the category of Noise, and our discussion
7 was that we believe that it would be in the best
8 interest of the city actually to -- to allow us
9 the flexibility to work day or night, weekends or
10 not, various sections at various times, so as to
11 minimize the impact on everyone along the pipeline
12 route.

13 MR. SCHOLZ: I would agree. I guess
14 what I'm searching for is a determination of
15 what's the best mitigation for this impact. Did
16 you determine a level of service existing to these
17 roads that are going to be disrupted, and where
18 they're going to go, the level of service is going
19 to go while this construction is taking place?

20 MS. ACUTANZA: We did an analysis of
21 construction impacts based on a level of service
22 analysis with and without the project, or with --
23 with and without the construction traffic. We
24 looked at the peak construction traffic and found
25 that there was no level of service impact.

1 MR. SCHOLZ: I'd like my next questions
2 to address the Hazardous Materials Management
3 testimony, focusing specifically on the rebuttal
4 testimony to CVRP's Hazardous Materials Management
5 testimony currently known as, I believe, Exhibit
6 36.

7 HEARING OFFICER VALKOSKY: Applicant's
8 rebuttal testimony is Exhibit 36. CVRP's
9 testimony is Exhibit 33.

10 MR. SCHOLZ: Okay. Thank you.

11 On page 2 of Exhibit 36 -- 2 and 3,
12 actually, Table 1 is a list of ammonia facilities
13 that use, store, produce or emit ammonia. To the
14 best of your knowledge, is this table believed to
15 be a comprehensive list in regards to ammonia?

16 MR. SALAMY: It is not.

17 MR. SCHOLZ: Are there any other sources
18 of ammonia that you became aware of after
19 submitting this testimony?

20 MR. SALAMY: No.

21 MR. SCHOLZ: Are the -- if this isn't
22 comprehensive, is -- the ones that aren't listed,
23 are they significant --

24 MR. SALAMY: You're asking me to --

25 MR. SCHOLZ: -- to this table?

1 MR. SALAMY: You're asking me to
2 speculate, and I -- I can't do that.

3 MR. SCHOLZ: Why were they omitted from
4 this table, then?

5 MR. SALAMY: They were not omitted.
6 This table represents those facilities that are in
7 compliance with the Federal Toxic Release
8 Inventory Act. As such, only those facilities
9 that comply with the act are represented in this
10 table.

11 MR. SCHOLZ: Do you know if there are --
12 do you have personal knowledge of other facilities
13 that -- that use, store, produce or emit ammonia
14 that are not on this list?

15 MR. SALAMY: No.

16 MR. SCHOLZ: Is it your testimony that
17 there's just an undetermined number of users that
18 are using ammonia that you're just unaware of, in
19 general?

20 MR. SALAMY: Yes.

21 MR. SCHOLZ: Do you know if the CVRP
22 project in North Coyote Valley is expected to
23 require ammonia for their project?

24 MR. DUNSTAN: I reviewed the EIR for the
25 CVRP, and in the portion of that EIR that

1 addresses the use of hazardous materials, there is
2 -- is quite an extensive list of hazardous
3 materials that might be used, and aqueous ammonia
4 up to a maximum concentration of 44 percent was on
5 that list.

6 MR. SCHOLZ: When you reviewed the EIR,
7 did it say what its application was for, what they
8 plan to use it for?

9 MR. DUNSTAN: No.

10 MR. SCHOLZ: It's just on the list of
11 potential components of their project?

12 MR. DUNSTAN: That's the way the list
13 was described in the text of the ER -- pardon me,
14 the EIR.

15 MR. SCHOLZ: In your professional
16 experience, do you have any idea what CVRP would
17 be using ammonia for?

18 MR. DUNSTAN: Specifically, no. But
19 aqueous ammonia has a number of applications.

20 MR. SCHOLZ: Do you know if the IBM
21 facility in Coyote Valley on Bailey Avenue
22 requires ammonia for their project?

23 MR. DUNSTAN: No.

24 MR. SCHOLZ: Are you aware that Cylinks
25 has purchased property in the North Coyote Valley

1 area for their corporate offices?

2 MR. DUNSTAN: I have heard that.

3 MR. SCHOLZ: Do you know if any of the
4 -- or do you know if their existing San Jose
5 offices require ammonia for their project?

6 MR. DUNSTAN: We don't know.

7 HEARING OFFICER VALKOSKY: Mr. Scholz,
8 where are you going with this? I mean, the
9 witnesses have testified to the -- to the scope of
10 their understanding to the projects they've
11 identified as a representative list. I don't
12 think it's fruitful to continue exploring the --
13 their knowledge about these other projects.

14 MR. SCHOLZ: May I continue with some
15 latitude to eventually get to a point?

16 HEARING OFFICER VALKOSKY: Why don't you
17 just go to the point.

18 MR. SCHOLZ: Without any foundation?
19 Okay.

20 PRESIDING MEMBER LAURIE: Okay, let me
21 talk about that for a second, Mr. Scholz.

22 You're always free, and, in fact,
23 encouraged to go directly to the point. In some
24 complex judicial matters, setting forth a
25 foundation is critical to certain testimony.

1 Unless there's objection by counsel, it's not
2 necessary here, and I don't think necessary to
3 your record. So you're absolutely encouraged to
4 determine what the point is, and go directly
5 there. In fact, I think it's beneficial to all
6 parties, including the person asking the question,
7 to do that.

8 MR. SCHOLZ: To be fair, Commissioner
9 Laurie, and thank you for that guidance, all of my
10 questions require only a yes/no answer, and they
11 are scripted, so it's not like I'm going to be
12 going off the cuff, winging stuff here. So it
13 won't take very long if I just go through it.

14 PRESIDING MEMBER LAURIE: All right.
15 Fine.

16 MR. SCHOLZ: Do you know of any pending
17 applications in the Santa Teresa Business Park
18 area or North Coyote Valley area which require
19 ammonia for their pending projects?

20 MR. DUNSTAN: No.

21 MR. SCHOLZ: In Table 1, you listed Air
22 Drawing orchards. Could that possibly be a typo
23 and should be Airdrome Orchards?

24 MR. DUNSTAN: It's -- it's possible.

25 MR. SCHOLZ: Would you accept that

1 Airdrome Orchards is listed in the San Jose phone
2 book as 610 East Gish Road?

3 MR. DUNSTAN: I have no knowledge of
4 their address.

5 MR. SCHOLZ: The only reason I brought
6 it up was because it wasn't listed as a specific
7 address.

8 Would you also accept that Kellogg USE
9 has an address in the phone book of 475 Eggo Way,
10 which happens to be the same address as Mrs.
11 Smith's Frozen Foods Company in Table 1?

12 MR. DUNSTAN: We have no knowledge of
13 that.

14 MR. SCHOLZ: Would you clarify that Hill
15 Brothers Chemical Company is three miles north of
16 the Agnews Power Plant, or three miles north of
17 the proposed MEC project?

18 MR. DUNSTAN: My statement was that the
19 Hill Brothers facility is about three miles north
20 of San Jose City Hall.

21 MR. SCHOLZ: Did your earlier testimony
22 today state that ammonia deliveries are currently
23 being made throughout the South San Jose, Santa
24 Teresa or North Coyote Valley area?

25 MR. DUNSTAN: It's my understanding that

1 ammonia deliveries in various forms are -- are
2 being made in the Santa Teresa area, particularly
3 to the water treatment plant, and to many other
4 users throughout Santa Clara County.

5 MR. SCHOLZ: So the only cite to the
6 general South San Jose area, to your knowledge, is
7 the water pollution, or the water treatment
8 facility?

9 MR. DUNSTAN: We haven't mapped it,
10 mapped the locations of all of these businesses.

11 MR. SCHOLZ: Is that facility you just
12 cited to that question listed in Table 1?

13 MR. DUNSTAN: Good question. I was
14 referring to the water treatment facility operated
15 by the Santa Clara Valley Water District. Which I
16 believe they identify as the Santa Teresa
17 facility.

18 MR. SCHOLZ: Could you clarify that
19 you're talking about that facility, or the Alviso
20 facility?

21 MR. DUNSTAN: The list refers to the
22 Alviso facility. The facility I mentioned was the
23 Valley Water District's Santa Teresa plant.

24 MR. SCHOLZ: So is it your testimony now
25 that you know of a place that has aqueous ammonia

1 in the South San Jose/Santa Teresa community, the
2 water pollution facility in that general vicinity?

3 MR. DUNSTAN: That's not a water
4 pollution facility. That is a --

5 MR. SCHOLZ: Water treatment --

6 MR. DUNSTAN: -- facility that treats
7 surface water for distribution to potable
8 retailers.

9 MR. SCHOLZ: Is it believed that the
10 point that ammonia delivery trucks would leave the
11 freeway system and beginning traversing city
12 streets would be at Bernal Road?

13 MR. DUNSTAN: Until the proposed new
14 interchanges are constructed, that's correct.

15 MR. SCHOLZ: Focusing in on the San Jose
16 facilities listed in Table 1, and attempting to
17 ask this question without going through each
18 facility one by one, would you clarify that all of
19 these ammonia users are many miles north of the
20 MEC site, and even many more miles north of the
21 101 Bernal Road freeway existing point?

22 MR. DUNSTAN: We have not mapped these
23 locations. We don't know the precise distance
24 between them and any other points.

25 MR. SCHOLZ: If someone more familiar

1 with the community of San Jose would say that
2 these facilities are as far as seven miles away to
3 18 miles north of the proposed MEC site, would you
4 agree with that statement?

5 MR. HARRIS: Objection. Calls for
6 speculation.

7 PRESIDING MEMBER LAURIE: I'm not sure I
8 know what -- what the question was. I -- I guess
9 you can pick out individual facilities and ask
10 them if they know the specific locations of them.
11 The testimony has been that it hasn't been mapped.
12 If you feel a need to go through each facility and
13 there's a purpose for it, then you can ask them if
14 they know the location of it.

15 MR. SCHOLZ: The purpose -- the purpose
16 I'm trying to establish is that I'm familiar with
17 all of these facilities and where they are
18 located, and I know how far they are.

19 PRESIDING MEMBER LAURIE: Well, then you
20 can -- if you have another witness --

21 MR. SCHOLZ: We'd like --

22 PRESIDING MEMBER LAURIE: -- if there's
23 another witness that can go through it and offer
24 that testimony, then they can do that.

25 MR. SCHOLZ: Can I ask for guidance on

1 how to --

2 HEARING OFFICER VALKOSKY: Or, Mr.

3 Scholz, you can --

4 MR. SCHOLZ: -- establish that fact?

5 HEARING OFFICER VALKOSKY: -- you could

6 just ask the witnesses to their knowledge, how

7 many and which facilities within the Coyote Valley

8 use, store, produce, or emit ammonia.

9 MR. SCHOLZ: How many facilities do you
10 know in the South San Jose/Santa Teresa/North
11 Coyote Valley area that use, store, produce or
12 emit ammonia?

13 MR. DUNSTAN: The only one I'm aware of
14 that is in that category is the Santa Clara Valley
15 Water District Treatment Plant in Santa Teresa.

16 MR. SCHOLZ: Do you know where that
17 facility is?

18 MR. DUNSTAN: We don't know.

19 MR. SCHOLZ: Would you agree that all of
20 these facilities in San Jose listed in Table 1 are
21 in more industrial areas of the city than what is
22 planned in North Coyote Valley?

23 MR. HARRIS: I'm going to object on the
24 basis that they've already stated that they
25 haven't mapped these.

1 HEARING OFFICER VALKOSKY: I'm going to
2 sustain that objection. I think we've -- we've
3 been over this ground, we have explored the limit
4 of the witness' knowledge as to the location of
5 these facilities.

6 MR. SCHOLZ: Referencing page 2,
7 paragraph 1, third and fourth sentences of the
8 CVRP Hazardous Materials rebuttal testimony, are
9 those speculative --

10 MR. HARRIS: Can you give the citation
11 again?

12 MR. SCHOLZ: Referencing page 2 of
13 Exhibit 36, paragraph 1, third and fourth
14 sentences --

15 MR. HARRIS: Hang on a second, Scott.
16 I'm sorry.

17 MR. SCHOLZ: Certainly.

18 MR. HARRIS: CVRP's testimony, right?
19 Page 2?

20 MR. SCHOLZ: Paragraph 1.

21 MR. HARRIS: Paragraph 1.

22 MR. SCHOLZ: Third and fourth sentences.

23 MR. HARRIS: Do the witnesses have
24 copies of that testimony?

25 MR. SCHOLZ: Are those speculative

1 statements and/or opinions that are not supported
2 by the answers that you just have given?

3 MR. DUNSTAN: As I previously stated,
4 the approved EIR for the Cisco campus would
5 indicate their expectation that aqueous ammonia of
6 greater strength may be used in that facility.

7 MR. SCHOLZ: Is your analysis regarding
8 the insignificant risk associated with project
9 use, storage and transportation of ammonia in any
10 way influenced by an improper assumption that
11 ammonia is already being transported through the
12 MEC impacted community?

13 MR. HARRIS: I'm going to object to the
14 question. I didn't understand it, and maybe that
15 was the problem.

16 MR. SCHOLZ: If I repeated it would it
17 help?

18 HEARING OFFICER VALKOSKY: Sustained.
19 Why don't you -- yeah. Repeat it, and possibly
20 rephrase it. You've got a couple of assumptions
21 built in there.

22 MR. SCHOLZ: Is your analysis regarding
23 the insignificant risk associated with project
24 use, storage and transportation of ammonia in any
25 way influenced by an improper assumption that

1 ammonia is already being transported through the
2 MEC impacted community?

3 MR. HARRIS: I'm going to object.

4 HEARING OFFICER VALKOSKY: Sustained.

5 Does your analysis include the assumption that
6 ammonia is currently being transported through the
7 MEC project area?

8 MR. DUNSTAN: It includes no such
9 assumptions.

10 HEARING OFFICER VALKOSKY: Thank you.

11 MR. SCHOLZ: If the CVRP project is not
12 built, hypothetically, would you agree that the
13 risk associated in regards to ammonia to the South
14 San Jose, Santa Teresa and Coyote Valley community
15 residents and businesses is solely due to
16 operation of the proposed MEC facility?

17 MR. HARRIS: I'm going to object on the
18 basis that the question is unintelligible, with
19 all due respect. I'm sorry, can you rephrase?

20 MR. SCHOLZ: Is the question too long?

21 MR. HARRIS: Or I'm too tired. One or
22 the other.

23 MR. SCHOLZ: Hypothetically, if CVRP is
24 not built, would you agree that the public risk
25 associated in regards to ammonia, to the South San

1 Jose, Santa Teresa and Coyote Valley community
2 residents, and their businesses, are solely due to
3 the operation of the proposed MEC facility?

4 MR. DUNSTAN: Our analysis of risk to
5 direct impact due to MEC was done without regard
6 to any other sources, and concluded that that risk
7 was insignificant.

8 MR. SCHOLZ: So your testimony is it's
9 insignificant, but it's solely, in this
10 hypothetical, only due to the MEC facility?

11 MR. DUNSTAN: That's correct.

12 MR. SCHOLZ: Thank you. I believe that
13 would conclude my questions.

14 HEARING OFFICER VALKOSKY: Thank you,
15 Mr. Scholz.

16 Is Mr. Boyd here? CARE is not here.

17 Mr. Ajlouny.

18 MR. AJLOUNY: Yes. Ms. Cord asked me to
19 let you know that she is not going to be cross
20 examining.

21 HEARING OFFICER VALKOSKY: Okay. Thank
22 you.

23 MR. AJLOUNY: On this --

24 HEARING OFFICER VALKOSKY: Thank you for
25 that.

1 CROSS EXAMINATION

2 MR. AJLOUNY: Okay. I have a number of
3 things. I want to first direct my questions to
4 the rebuttal, and I don't know the number that
5 goes along with that, but it's 60-something, Mr.
6 Spellman's testimony.

7 MR. DUNSTAN: I'll ask Mr. Tornatore to
8 respond to those questions, unless I see something
9 else in the question.

10 MR. AJLOUNY: Is that -- is that
11 pronounced Tornatore?

12 HEARING OFFICER VALKOSKY: Tornatore.

13 For the record, the Applicant's rebuttal
14 testimony to Mr. Spellman's testimony has been
15 designated as Exhibit 34.

16 MR. AJLOUNY: So Exhibit 34, page 4.
17 You mentioned your -- your qualifications were
18 previously submitted, and I -- I don't have that.
19 And just real brief, where does your Haz Mat --
20 Hazardous Materials experience come from?

21 MR. TORNATORE: I have 16 years of
22 looking at power plants and power facilities that
23 use hazardous materials, and a variety of -- and
24 industrial facilities, as well.

25 MR. AJLOUNY: Okay. Have you ever

1 responded to a hazardous incident yourself?

2 MR. TORNATORE: Personally, no.

3 MR. AJLOUNY: Are you trained in that?

4 MR. TORNATORE: No.

5 MR. AJLOUNY: Okay. And I'm not trying
6 to give you a bad time. I'm just trying to get --

7 MR. TORNATORE: That's -- that's fine.

8 MR. AJLOUNY: -- get a background. Are
9 you familiar with Mr. Spellman's background in
10 what he does?

11 MR. TORNATORE: Just from what I've read
12 in his declaration.

13 MR. AJLOUNY: Is it a fact that Mr.
14 Spellman on a daily basis responds to hazardous
15 materials incidents in the San Jose area?

16 MR. TORNATORE: I can't tell that from
17 his declaration. It doesn't say daily.

18 MR. AJLOUNY: Well, maybe from his
19 resume. Did you get a chance to look at his
20 resume?

21 HEARING OFFICER VALKOSKY: Issa, I think
22 the -- you phrased your question as Mr. Spellman
23 responds on a daily basis, and I think that's
24 unfair. There's nothing --

25 MR. AJLOUNY: Okay. I'm sorry. And

1 before I get going, I do want to state that Mr.
2 Spellman is not testifying for the San Jose Fire
3 Department, or any, you know, associated piece of
4 that.

5 HEARING OFFICER VALKOSKY: Thank you.

6 MR. AJLOUNY: Okay. So I do want to
7 make that clear.

8 How do I ask -- are you aware that Mr.
9 Spellman is employed with the San Jose Fire
10 Department?

11 MR. TORNATORE: From his declaration,
12 yes.

13 MR. AJLOUNY: Are you aware that he's in
14 the Department of Hazardous Incident Team, and
15 from now on I'll just say the HIT team, just to
16 make it easier for myself, if that's acceptable.

17 Are you familiar that he's with the HIT
18 team of the San Jose Fire Department?

19 MR. TORNATORE: He states that he is,
20 yes.

21 MR. AJLOUNY: Do you have any reason to
22 believe that that's not true?

23 MR. TORNATORE: No.

24 MR. AJLOUNY: Okay. I think I learned
25 my lesson of not having him here, and this whole

1 procedure. But I'll just try to work with this.

2 Are you -- do you -- did you realize --
3 no, I guess that wasn't you. Okay. Let's go to
4 page 5 of Exhibit 34. The same document.

5 MR. TORNATORE: I'm sorry, which --

6 MR. AJLOUNY: Page 5.

7 MR. TORNATORE: -- which document?

8 MR. AJLOUNY: The same, Exhibit 34 --

9 MR. TORNATORE: Our testimony? Our
10 rebuttal testimony?

11 MR. AJLOUNY: The rebuttal testimony --

12 HEARING OFFICER VALKOSKY: It's
13 Applicant's rebuttal testimony.

14 MR. TORNATORE: Thank you.

15 MR. AJLOUNY: Yes. I take it Mr. John
16 Carrier is not here. Is he? I don't know who
17 this person is.

18 HEARING OFFICER VALKOSKY: Mr. John
19 Carrier is not a witness.

20 MR. AJLOUNY: Okay. So from -- from
21 this phone conversation from Mr. Carrier to Joe
22 Reich --

23 MR. TORNATORE: Yes.

24 MR. AJLOUNY: -- you've had a chance to
25 look at that?

1 MR. TORNATORE: Yes.

2 MR. AJLOUNY: Did you understand Mr. Joe
3 Reich was not in the -- he's not the captain of
4 the Hazardous Incident Team?

5 MR. TORNATORE: I'm not aware of that.

6 MR. AJLOUNY: Okay. And Stan, I'm going
7 to need a little guidance. I'm aware of that, and
8 Mr. Spellman was going to testify to that
9 yesterday. How do I -- give me a little help.

10 MR. HARRIS: Can we be off the record,
11 please?

12 HEARING OFFICER VALKOSKY: Yes.

13 (Off the record.)

14 MR. AJLOUNY: Where -- where I'm going
15 with this, in this line of questioning --

16 PRESIDING MEMBER LAURIE: Is there a
17 question?

18 MR. AJLOUNY: Uh-huh.

19 PRESIDING MEMBER LAURIE: That -- that's
20 fine. Go ahead and -- and tell us where you're
21 going. We're interested in knowing where you're
22 going.

23 MR. AJLOUNY: Okay. That's what I was
24 trying to do. Where I'm going with this is I had
25 an expert witness that's been with the Haz Mat

1 team for years, responds, has been doing that job
2 for years, and the rebuttal was just, you know,
3 discrediting his opinion that a fire station needs
4 to be closer in the vicinity.

5 And so where I was going with this is
6 this rebuttal is not worth much because of the --
7 because of the -- the experience that this person
8 that answers the phone --

9 PRESIDING MEMBER LAURIE: Okay. That --
10 that I would suggest goes to the weight of -- of
11 the evidence. The Committee weighs that evidence.
12 You're also free, when you make your arguments, to
13 argue that point. I don't think these witnesses
14 add anything to that argument. That is, I don't
15 think these witnesses have information that helps
16 you get there, because you're -- you're making
17 argument.

18 So if -- if you think these witnesses
19 have information that discredits their testimony,
20 then think of what that question might be. But we
21 haven't heard that. If it's just a question of
22 argument, then at the appropriate time you make
23 the argument that their rebuttal should not be
24 given weight.

25 MR. AJLOUNY: At the end of this

1 questioning?

2 PRESIDING MEMBER LAURIE: At -- at the
3 end of the whole deal. When -- when you go make
4 your closing argument. Because it's just a
5 question of weighing -- weighing the evidence.

6 MR. AJLOUNY: Okay. All right.
7 Well, turning to Mr. Spellman's
8 testimony. Whoever this is directed to. Have you
9 had a chance to look at his testimony?

10 MR. TORNATORE: Yes.

11 MR. AJLOUNY: Okay. Do you have any
12 problem with any of his testimony? Any things
13 that you might, in your opinion, feel that it's
14 not true and correct?

15 MR. HARRIS: I'm going to object and ask
16 that you narrow the question.

17 MR. AJLOUNY: Okay. On page 1, where it
18 talks about first responder awareness. Is that
19 what you believe to be true, as far as the
20 definition of first responder awareness?

21 MR. TORNATORE: The items listed
22 underneath there? Is that what you're talking
23 about?

24 MR. AJLOUNY: Yes.

25 MR. TORNATORE: Yes.

1 MR. AJLOUNY: And first responder
2 operations, on the next page. Is that what you
3 believe to be true as a definition?

4 MR. TORNATORE: Yes.

5 MR. AJLOUNY: I'm just trying to get to
6 the meat here, as the Commissioner asked.

7 And then the next one, I think there's
8 five listed -- that's the point I was making. Do
9 those seem to be -- agree of your knowledge of the
10 definitions?

11 MR. TORNATORE: These levels, the two
12 levels you're talking about?

13 MR. AJLOUNY: Well, okay. Then, let me
14 -- and then technical level, on the next page.

15 MR. TORNATORE: Are you going --

16 MR. AJLOUNY: I was going through the
17 five different levels, and I just wanted to make
18 sure --

19 MR. TORNATORE: Oh, okay. Okay, I'm
20 sorry.

21 MR. AJLOUNY: That's where I was going
22 with that.

23 MR. TORNATORE: Yes.

24 MR. AJLOUNY: Okay. Which level do you
25 believe to be the level to protect the public from

1 any hazardous incident that escapes the general
2 area there?

3 MR. TORNATORE: That escapes the general
4 area?

5 MR. AJLOUNY: Yeah.

6 MR. TORNATORE: The offsite consequence?

7 MR. AJLOUNY: I'm --

8 MR. TORNATORE: That would be the fire
9 department.

10 MR. AJLOUNY: Okay. Let me be more
11 specific. If there's -- if there is an ammonia
12 spill within the plant, not a truck, but within
13 the plant, or maybe just delivering it in the
14 tanks, and it was a major ammonia spill, is it not
15 true that the first responder awareness and the
16 first responder operations would not be qualified
17 to contain a -- a major spill in the facility?

18 MR. DUNSTAN: I think to answer your
19 question completely, we should review a number of
20 areas. The first one is Facility Design. Our
21 commitment is to provide a facility that, by its
22 design, will contain the maximum spill. And the
23 Commission Staff has addressed that in their
24 testimony and -- and they've structured Conditions
25 of Certification around doing that.

1 So the facility's response to a major
2 release requires no human intervention. Whether
3 it's a discharge of the entire contents of the
4 storage tank into its containment, or a failure of
5 the delivery truck or a hose, or something like
6 that, because that entire operation will be done
7 within an area that will be designed specifically
8 to capture and contain that entire quantity of
9 spilled material in a space that controls the rate
10 of -- of evaporation. And there will be
11 automatically actuated water sprays to absorb
12 ammonia if it does get into the air, and so on.
13 And the operators can stand back and just watch it
14 happen, and the maximum consequences of those
15 events have been analyzed in our testimony and
16 reviewed by the Staff.

17 The plant operators, particularly the
18 first awareness -- the first responders who -- who
19 -- other than those -- the people in the office
20 who would stay indoors -- the people who are
21 trained to provide a backup to the automatic
22 features will, first off, be on the plant 24 hours
23 a day. They will have all the right equipment,
24 all the right training, know how everything works,
25 and be prepared to intervene in case some of the

1 automatic features don't work.

2 My point in saying this is that the
3 plant has been specifically designed, or committed
4 to be specifically designed, and the operators are
5 committed to receive a level of training under the
6 supervision of the fire department and Haz Mat
7 people, be equipped to reduce the potential for
8 offsite consequences of an ammonia release of any
9 type, of any magnitude, to the point where there
10 will be no significant effect to the -- impact to
11 the community.

12 So what we're talking about is a
13 situation in which none of that works. Seriously.
14 So that's -- that's when outside assistance will
15 be required.

16 We -- we are committed to designing for
17 protection in depth, and our own employees are
18 there first. It's like the pilot in the airplane.
19 Whatever happens to the passengers happens to him
20 first. So that is our commitment.

21 Now, if that's more information than you
22 wanted, I'm sorry.

23 MR. AJLOUNY: No, that -- that's fine.

24 And with that explanation, I don't think we need a
25 HIT team in San Jose, or -- from what you're

1 saying, the accidents don't happen. And I'm
2 getting to the point of accidents do happen.

3 So let me ask the question. If an
4 accident does happen, would your first responder
5 awareness and your first responder operations
6 people -- from what I understand, some are
7 operational trained, all are awareness trained, as
8 far as first responder -- would they be able to
9 deal with containing the ammonia if -- and I'll
10 give you an example. Let's -- hypothetical, some
11 nut in a big semi comes driving through at 70
12 miles an hour, through the farmlands, at a high
13 speed, and goes right into the tank. And -- and
14 he has some explosives with him, and it blows up.
15 Hypothetically, right? And blows up everything.
16 Is -- is your employees able to contain the high
17 pressure tanks that spill over?

18 MR. HARRIS: Okay. I'm going to object.

19 PRESIDING MEMBER LAURIE: No, I'm not --
20 no, the question is clear to me. Without
21 assistance, is your first responder team capable
22 of containing a major spill without outside --
23 again, without outside assistance. And it depends
24 on your definition of level of training of your
25 first responder team. The answer is yes or no,

1 depending upon how you define the work of your
2 first responder team. That's how I heard the
3 question.

4 Is -- is that your intent, sir?

5 MR. AJLOUNY: Yes, it is.

6 MR. DUNSTAN: Given the scenario you've
7 postulated, and they get around all the trees --

8 MR. AJLOUNY: I just want a yes or no
9 answer, if I could.

10 MR. DUNSTAN: It is possible to conceive
11 of extremely remote probability events that could
12 defeat our safety systems and our training.

13 MR. AJLOUNY: So was that -- that was a
14 yes?

15 MR. DUNSTAN: I will have to ask you to
16 restate the question now.

17 MR. AJLOUNY: Hypothetically, if some
18 crazy person --

19 PRESIDING MEMBER LAURIE: Well, Issa,
20 let's not go with the crazy person. If a major
21 accident occurs, is your first responder team
22 capable of containing all incidences, or are there
23 circumstances where outside assistance is
24 anticipated to be needed?

25 MR. DUNSTAN: The answer is yes.

1 MR. AJLOUNY: Okay. With that in mind,
2 is it your understanding that Station 27 and all
3 the other stations in the San Jose Fire Department
4 are first responder awareness trained?

5 MR. DUNSTAN: Whoever's qualified to
6 answer that.

7 MR. TORNATORE: From -- from Mr.
8 Spellman's testimony, that's what he says.

9 MR. AJLOUNY: With your expertise,
10 what's your opinion?

11 MR. TORNATORE: I would assume that some
12 of them may be trained to a higher level. I would
13 imagine all of them are trained to the lowest
14 level. Yes.

15 MR. AJLOUNY: Okay. Would you -- would
16 you think that any of them are trained to the
17 level of the HIT team?

18 MR. TORNATORE: I don't know.

19 MR. AJLOUNY: Again, I apologize. It
20 was my mistake of allowing his testimony to be
21 taken in without him coming up here. But I'm
22 trying to deal with that now.

23 Give me one second, I'll get my thoughts
24 together.

25 (Pause.)

1 MR. AJLOUNY: Would the answer to my
2 last question, or the one long question and the
3 answer was yes about some -- something happening
4 where you need some outside assistance, is it
5 reasonably easy to believe that a response from
6 the HIT team, who is, we all know is trained for
7 that, be over 30 minutes? Is that -- a response,
8 once they get a phone call?

9 MR. HARRIS: Can you restate the
10 question?

11 MR. AJLOUNY: Is it reasonably easy to
12 assume that it's at least 30 minutes away from the
13 HIT team of the San Jose Fire Department to
14 respond to the location at -- proposed location at
15 Metcalf?

16 HEARING OFFICER VALKOSKY: Or phrased
17 differently, do you know the approximate response
18 time for the HIT team to the Metcalf site?

19 MR. DUNSTAN: No.

20 MR. AJLOUNY: Okay. So with your expert
21 testimony, if -- how did you come to the
22 conclusion that a fire station is not needed there
23 if you don't know how long it would take from the
24 existing HIT team? What was your analysis based
25 on?

1 MR. TORNATORE: Repeat that question.

2 I'm sorry.

3 MR. AJLOUNY: And make me do it twice,
4 it kills me. I wish there was a recorder here, I
5 could just hit replay.

6 How was your analysis -- what was your
7 analysis based on when you didn't know the
8 response time? You know, I guess in the area of
9 stating that a fire station, a HIT team station is
10 not needed to be close to this location.

11 MR. TORNATORE: Our information was
12 based on the information given us by Joe Reich.

13 MR. AJLOUNY: Is there any document that
14 you know of that states that Joe is with the HIT
15 team?

16 MR. HARRIS: Objection.

17 MR. TORNATORE: Our conversation --

18 MR. HARRIS: Objection.

19 HEARING OFFICER VALKOSKY: We've been
20 over that ground already.

21 MR. AJLOUNY: Okay. All right. Well,
22 do you -- are you -- do you -- are you aware where
23 the HIT team station is, in San Jose?

24 MR. DUNSTAN: We think we do, but we're
25 looking for the reference. No.

1 MR. AJLOUNY: Wow. Commissioner, is
2 this where I ask that the rebuttal testimony
3 doesn't get admitted into evidence, or am I off
4 the wall? Or, Mr. Valkosky.

5 HEARING OFFICER VALKOSKY: No, this is
6 not the -- not the place, but I think you ought to
7 -- because it is not been moved into the record,
8 as of yet. But I think you ought to keep in mind
9 that your line of questioning so far goes more
10 toward the weight the Committee should afford the
11 evidence, rather than its admissibility.

12 Basically, what that means is by
13 attempting to impugn the knowledge and/or
14 credibility of the witnesses, what you have done
15 is you have given the Committee reason to
16 scrutinize the probative value of the testimony.

17 MR. AJLOUNY: Okay.

18 HEARING OFFICER VALKOSKY: That's --
19 that's different from not allowing it in at all.

20 MR. AJLOUNY: Okay. Okay, just for
21 time's sake. Should I continue on with this --
22 with this line of questioning to discredit the
23 rebuttal, or have I completed that job, should I
24 go on to the next?

25 HEARING OFFICER VALKOSKY: I will have

1 to leave that decision up to you, although I -- I
2 don't know personally where you're going to get
3 with further questions on this. I think --

4 MR. AJLOUNY: Okay. Let me just try a
5 couple --

6 HEARING OFFICER VALKOSKY: Well, let me
7 try a couple of things. First of all, and this is
8 to the Applicant's panel. Are you aware of the
9 plans which would be in place at the project,
10 should a hazardous materials release occur?

11 MR. TORNATORE: Yes.

12 HEARING OFFICER VALKOSKY: Okay. Could
13 you explain those plans briefly, please.

14 MR. TORNATORE: They'll be -- the
15 hazardous -- the Hazardous Materials Management
16 Plan will have -- will have information in regards
17 to emergency response in it, and the Risk
18 Management Plan, as well. And that would be
19 specific to the ammonia tank.

20 HEARING OFFICER VALKOSKY: Okay. Will
21 that Risk Management Plan consider as a factor the
22 response times of the nearest fire suppression
23 personnel, and hazardous incident team?

24 MR. TORNATORE: That will not, but the
25 business plan will.

1 HEARING OFFICER VALKOSKY: Okay. When
2 will the business plan be prepared?

3 MR. TORNATORE: Actually, the Hazardous
4 Materials Management Plan, I'm sorry.

5 HEARING OFFICER VALKOSKY: All right.
6 When will the Hazardous Materials Management Plan
7 be prepared?

8 MR. TORNATORE: Prior to operation of
9 the facility.

10 HEARING OFFICER VALKOSKY: Which
11 authorities will be responsible for reviewing the
12 Hazardous Materials Management Plan and approving
13 it?

14 MR. TORNATORE: The CPM, the Energy
15 Commission's CPM, and the County of Santa Clara.
16 Because they are the -- they are the CUPA for both
17 the county and the city, CUPA meaning the
18 Certified Unified Permitting Agency, which as one
19 of its objects is to oversee the hazardous
20 materials management plans.

21 HEARING OFFICER VALKOSKY: Thank you.

22 PRESIDING MEMBER LAURIE: Mr. Ajlouny,
23 let me attempt to respond to your question, and I
24 thank Mr. Valkosky for asking those questions.
25 And this is for future guidance.

1 Let's assume that a certain testimony
2 has 100 words in it. The Committee will not allow
3 you to -- to attack the validity of each of the
4 100 words, because there's not enough time in the
5 world to do that. But out of those 100 words,
6 five, or six or seven, or ten, might be very
7 important to your case. And those are the issues
8 that you are to concentrate on. I would suggest
9 to you that when you get to ten and fifteen, or
10 twenty, it, in my view, would have the capability
11 of distracting you from focusing on the critical
12 points of the case.

13 Now, as to credibility, it could be that
14 out of 100 words, if you show that five or six or
15 seven are incorrect, then you're -- you're clearly
16 sending the message that the credibility of the
17 entirety of the testimony does, in fact, lack
18 credibility. And you can do that without showing
19 that each of the 100 words is incorrect.

20 Does that make sense at all?

21 MR. AJLOUNY: Yes, it does, and I do
22 appreciate you, Commissioner, taking the time to
23 explain that to me.

24 Okay. Are you certain that the San --
25 Santa Clara County is the -- I want to say not

1 leading agency, but -- the CUPA, what -- CUPA?

2 You mentioned --

3 MR. TORNATORE: It's my understanding
4 they are.

5 MR. AJLOUNY: It's my understanding the
6 City of San Jose is. Do you have any
7 documentation to show that the county is, or where
8 would you have -- should I lead him to something?

9 Okay. Is the city -- okay. Is the City
10 of San Jose a participating agency for the CUPA?

11 MR. TORNATORE: With the County of Santa
12 Clara?

13 MR. AJLOUNY: Yes.

14 MR. TORNATORE: Yes.

15 MR. AJLOUNY: Okay. I won't go there.

16 Hypothetically, since we don't know
17 where the HIT team is, hypothetically, if it was
18 in Santa Clara area, do you think that that would
19 be a good position if what you know today, where
20 all the heavy industrial users are of ammonia,
21 from your list, from your, you know, list of all
22 -- would that be -- seem to be a good location for
23 that --

24 MR. TORNATORE: I haven't mapped the --
25 we haven't mapped the -- the locations of the

1 ammonia facilities.

2 MR. AJLOUNY: Would it be reasonably
3 easy to assume that if it's in Santa Clara and all
4 those places that you listed were in that north
5 part of San Jose?

6 MR. TORNATORE: We don't -- we don't
7 know the criteria that they use for putting -- the
8 placement of the HIT team.

9 MR. AJLOUNY: So you have no response to
10 on page 5 of Exhibit 34, of Mr. Spellman's
11 testimony, the last sentence of the first
12 paragraph of his conclusion, stating, potentially
13 response times for the individuals that would
14 actually perform containment/control issues could
15 be as long as an hour.

16 MR. TORNATORE: Those -- those are fire
17 department individuals, not the first responder
18 operations level, which actually have the training
19 for containment and control. If you --

20 MR. AJLOUNY: I thought we just went
21 through that. You know what, I'm not going to --
22 for the respect of not wanting to irritate anybody
23 else in this room, especially the Commissioners,
24 I'm going to carry on. I -- I'm not going to --
25 I'm not going to continue that.

1 PRESIDING MEMBER LAURIE: Sir, you do
2 not withhold questions out of concern of
3 irritating the Commissioners. If you feel that
4 there are questions that need to be asked that are
5 critical or important to your case, then you ask
6 such questions.

7 MR. AJLOUNY: Okay. Incident
8 Commander/On Scene Manager. What do you know of
9 his responsibilities? What do you know to believe
10 of that person's responsibilities?

11 MR. TORNATORE: Clarify the -- let me
12 hear the question --

13 PRESIDING MEMBER LAURIE: Why -- why is
14 this question critical or important here?

15 MR. AJLOUNY: Well, because he was
16 saying that the -- each fire station would come in
17 there and control the spill -- I thought that's
18 what I just heard when I asked my previous
19 question.

20 MR. SALAMY: If you're referring --
21 excuse me. If you're referring to the -- the
22 categories identified in Mr. Spellman's testimony,
23 these are functions of the fire department. And I
24 don't know that we're qualified to provide
25 testimony on the fire department's response

1 capabilities or the level of training or
2 competency of those individuals.

3 MR. AJLOUNY: With your expert -- wait a
4 minute. With your expert experience, could you
5 assume that the HIT team is for major hazardous
6 material incidences that happen in San Jose?

7 MR. TORNATORE: Define major.

8 MR. AJLOUNY: The scenario we went
9 through about five or six questions ago.

10 MR. TORNATORE: Yes. Yes, then.

11 MR. AJLOUNY: Okay. So is it your
12 understanding that there's only one in San Jose?

13 MR. TORNATORE: I don't know.

14 MR. AJLOUNY: Are you aware of the
15 Staff's testimony that it's written that the HIT
16 team is at least 30 minutes away?

17 MR. TORNATORE: One minute, please.

18 PRESIDING MEMBER LAURIE: Well, this is
19 -- this is an example. If that's going to be
20 Staff's testimony, then that's the evidence.
21 Unless these folks want to offer something
22 different, that's the evidence. You're -- you're
23 free to ask them whether they believe it or not,
24 but you don't know what their answer is going to
25 be.

1 MR. AJLOUNY: Well, thank you,
2 Commissioner. That's where I was going to go.
3 And then I --

4 HEARING OFFICER VALKOSKY: Okay, Issa.
5 Just -- just let me try this quickly. Maximum two
6 questions for the panel.

7 Are you familiar with the statement
8 appearing on page 116 of the Final Staff
9 Assessment, which reads, and I will read verbatim
10 the two sentences.

11 "The HIT unit is located at
12 SJFD Station Number 29 at 199
13 Innovation Drive in North San Jose.
14 Response time is in excess of 30
15 minutes to the MEC site."

16 Are you familiar with that statement?

17 MR. TORNATORE: Yes.

18 HEARING OFFICER VALKOSKY: Do you agree
19 with the response time stated in that portion of
20 the FSA?

21 MR. TORNATORE: Yes.

22 HEARING OFFICER VALKOSKY: Thank you.

23 Okay. Move on, Issa.

24 MR. AJLOUNY: Do you agree with Mr.
25 Spellman's sentence there on page 5, the last

1 sentence of the first paragraph under Conclusion?
2 Could be as long as an hour, that's the part I'm
3 focusing in on.

4 MR. TORNATORE: Yes.

5 MR. AJLOUNY: Okay. Knowing that all
6 the things that can happen with ammonia in a major
7 spill where a HIT team would be involved, would
8 that concern you that it might take up to an hour
9 to respond, if it was hypothetically your child in
10 the child care center next door, or something?

11 MR. HARRIS: Objection.

12 MR. AJLOUNY: Is that -- on what
13 grounds?

14 MR. HARRIS: It's argumentative.

15 MR. AJLOUNY: Wow. I thought it was a
16 yes or no answer.

17 HEARING OFFICER VALKOSKY: Sustained.
18 Just rephrase the question.

19 MR. AJLOUNY: Hypothetically, if your
20 child or grandchild -- I don't mean to be
21 offensive by saying grandchild -- but your child
22 --

23 (Laughter.)

24 MR. AJLOUNY: -- was, let's say, in a
25 building not too far away, 300 feet, or -- or, no,

1 1500 feet, major catastrophe with ammonia spill,
2 would it be your concern as a father if it might
3 take as long as an hour for the HIT team to
4 respond?

5 MR. HARRIS: I'm going to object on the
6 basis of relevance. Where is it going?

7 MR. AJLOUNY: Where I'm going is I want
8 a station next door.

9 PRESIDING MEMBER LAURIE: Well, you're
10 -- you're free to make that argument. You're free
11 to make the argument that the distance of the HIT
12 team is not -- is insufficient to provide security
13 for this project.

14 MR. AJLOUNY: And that's what I was
15 doing with Mr. Spellman's testimony, so --

16 PRESIDING MEMBER LAURIE: Okay. Well,
17 you -- you have Mr. Spellman's testimony. Mr.
18 Spellman's testimony stands.

19 MR. AJLOUNY: Well, I guess I'm not
20 going with rebuttal. Okay. I -- one second.

21 (Pause.)

22 MR. AJLOUNY: Was that answer going --
23 was that question going to be answered? Or is
24 that -- that last question I had. That's my last
25 question, too.

1 PRESIDING MEMBER LAURIE: If your
2 question of whether or not there would be a
3 concern, I would sustain an objection to the fact
4 that it's argumentative.

5 MR. AJLOUNY: Oh, okay. Okay. We'll go
6 off more on the hazardous issues, but off Mr.
7 Spellman's testimony.

8 Is it reasonable -- reasonably -- is it
9 reasonable to assume that there will be water at
10 the site at Metcalf before construction? In the
11 grounds of hazardous issues.

12 MR. DUNSTAN: There will be water on the
13 Metcalf site throughout the construction period.

14 MR. AJLOUNY: Okay. And is that going
15 to be through a fire hydrant? I'm talking just
16 for, you know, hazardous issues, you know, fire or
17 something. Would that be from a fire hydrant, or
18 a large tank, the two hour tank we talked about
19 yesterday?

20 MR. DUNSTAN: The entire fire protection
21 system and all of the hazardous materials response
22 safety systems and all of the training and
23 equipment will be in place before any hazardous
24 materials are brought onto the property.

25 MR. AJLOUNY: How about if there was a

1 fire on the property?

2 PRESIDING MEMBER LAURIE: That
3 question's already been asked and answered,
4 probably yesterday.

5 MR. AJLOUNY: Okay. I thought this was
6 the area to -- to ask that question. I was saving
7 it for today.

8 PRESIDING MEMBER LAURIE: The -- the
9 answer was yes, there is going to be water at the
10 time of construction for fire protection purposes.

11 MR. AJLOUNY: Okay. So would the
12 Applicant have any concerns of putting that
13 condition of certification?

14 MR. HARRIS: Objection. I'm not sure
15 what you're talking about, that certification.

16 MR. AJLOUNY: This condition of
17 certification before any construction, or
18 groundbreaking, that a established -- I'm going to
19 say fire hydrant, but layman's terms, some way
20 that the fire department can protect us, as the
21 public.

22 MR. DUNSTAN: Let -- let me respond,
23 maybe I can help you.

24 There is a requirement in the FSA for
25 preparation, submittal, approval, and so on, of a

1 construction phase fire protection plan. I
2 suspect that's in Safety somewhere. And -- and
3 that plan will address all of the potential
4 events that could occur during construction.

5 There will also be an operations phase
6 fire prevention and protection plan submitted very
7 early in the design of the project, and I don't
8 recall what the submittal requirements are.

9 So to answer your question, the project
10 will be required to have onsite at all times, from
11 the beginning of construction through the
12 operating life of the project, all of the
13 facility's materials, personnel, and equipment and
14 training that are deemed required to provide
15 protection to the public against any event that
16 might occur in the facility.

17 MR. AJLOUNY: Including a fire.

18 HEARING OFFICER VALKOSKY: Yeah. Issa,
19 as a point of further clarification, I would refer
20 you to page 128 of the Final Staff Assessment,
21 specifically Condition WORKER SAFETY-1, which
22 requires, among other things, quote, A
23 construction fire protection and prevention plan.

24 MR. AJLOUNY: Okay. Who would be
25 responding to a fire, not knowing if it's on

1 county slash or city land? And what -- what the
2 land is designated today?

3 MR. HARRIS: I'm going to object on the
4 basis it's not a proper question for the Haz Mat
5 folks.

6 MR. AJLOUNY: I guess I'm getting a
7 little confused, because my witness from the fire
8 -- you know, the fire piece was moved into this
9 area, so I saved my questions for this area.
10 Stan, I apologize, I -- but I thought that was
11 like an understanding that I would be able to ask
12 those kind of questions at this time.

13 HEARING OFFICER VALKOSKY: The
14 understanding was from the first set of hearings
15 that there were certain questions on the Worker
16 Safety and Fire Protection which, on the agreement
17 of the parties, would be considered today. That's
18 correct.

19 What you have is a fire safety question.
20 I think if the witnesses can answer it, they can
21 answer it. If not, I suggest you address it to
22 Staff, who I am informed is prepared to answer
23 questions concerning the contents of the Worker
24 Safety and Fire Protection questions.

25 MR. DUNSTAN: I want to make sure I

1 understand the question, Issa. I think I do, but
2 please ask me again.

3 MR. AJLOUNY: Well, knowing that half is
4 on city and half is on county, if there is a fire,
5 who would respond, county or city?

6 MR. DUNSTAN: In a situation in which a
7 facility straddles a jurisdictional line like
8 that, agencies throughout California, if not
9 throughout America, have mutual aid agreements
10 wherein they support one another in a variety of
11 situations so that, again, the public safety is
12 protected. So we would expect that depending on
13 the ultimate configuration of the jurisdiction of
14 the site, that either we would be exclusively in
15 the city and protected by the city, but the city
16 would be backed up by the county, or we would look
17 to the two agencies in their mutual assistance
18 agreement to determine how best to protect the
19 public against any incident at the project.

20 MR. AJLOUNY: Thank you.

21 HEARING OFFICER VALKOSKY: How much more
22 have you got?

23 MR. AJLOUNY: I -- I have probably
24 another ten minutes. I'll try to be more direct,
25 Stan. I apologize.

1 HEARING OFFICER VALKOSKY: Please.

2 Please do. I'd appreciate it.

3 MR. AJLOUNY: Okay. You mentioned
4 there's 15,000 gallons capacity at the power plant
5 near Cisco, your existing power plant. Is that
6 true?

7 MR. DUNSTAN: The -- the anhydrous
8 ammonia storage tank at the OLS Agnews facility,
9 my understanding is the total capacity is 15,000
10 gallons, but the legal limit on inventory is on
11 the order of 12,000 gallons.

12 MR. AJLOUNY: Okay. And as best of your
13 knowledge, do you reach that 12,000, or could you
14 be just putting a thousand in? Because it is a
15 smaller plant, and I'm just -- was concerned about
16 the size.

17 MR. HARRIS: Can the witness answer the
18 question before you ask a second one? One at a
19 time.

20 MR. AJLOUNY: Oh, I'm sorry.

21 MR. HARRIS: One at a time.

22 MR. AJLOUNY: I still love you, man.

23 MR. HARRIS: That's what scares me.

24 MR. DUNSTAN: Typically, the storage
25 tanks for this type of a reagent in a facility is

1 sized to as a minimum accepting inventory of a
2 full tanker truck. Generally, it's sized much
3 larger so that there is minimal risk the tank will
4 go dry before the next truck arrives.

5 MR. AJLOUNY: So your answer to the
6 question is probably 12,000 gallons.

7 MR. DUNSTAN: I -- I don't know how low
8 they let it go. I suspect they don't like to get
9 it below about 6,000.

10 PRESIDING MEMBER LAURIE: Issa, just for
11 your information, we're going to have to break at
12 6:35, and the Committee wants your testimony
13 completed by that time, or your questions
14 completed by that time.

15 MR. AJLOUNY: All right. I think I can
16 make -- I think I can make that, Commissioner. It
17 just matters how long it takes for the responses.

18 On the west entrance, I'm going into the
19 -- the west entrance for the plant that's
20 proposed, and I saw a map in here somewhere. And
21 I saw it up there. Is that in the 100 year flood
22 zone that was discussed yesterday?

23 MR. DUNSTAN: I frankly don't recall the
24 designation of that area, but it was accounted for
25 in the flooding analysis.

1 Maybe I can make this shorter. Last
2 night I reviewed the flooding analysis results
3 with our specialist on flood, and he advised me
4 that our analysis, which as we said was reviewed
5 by the water district and accepted, indicates that
6 the actual maximum flood water level during the
7 hundred year event will actually be six-tenths of
8 a foot below the top of the pavement on the
9 western access road. Because of assumptions
10 required in the modeling, the model would say that
11 everything gets washed out, because it's not an
12 engineered levee, but in reality the water would
13 not even top the pavement.

14 MR. AJLOUNY: Okay. Two more points I
15 want to bring out. In the routing of the truck,
16 you -- we all saw how you come down Monterey, make
17 a right turn on Passantino's family, you go along
18 the panhandle and get to the plant. Once the
19 second entrance, western entrance opens up, if it
20 ever does, if CV -- you know, whatever, what is
21 the exact routing? You said something to me that
22 was a little bit confusing. And I'm pretty -- I
23 know the area, so if you could just state it.

24 MR. DUNSTAN: The -- the exact routing
25 is not known, and we cannot know it at this time.

1 There is a requirement, Ms. Acutanza has reminded
2 me, in Condition HAZ-3, there's a requirement to
3 develop and implement a safety management plan for
4 delivery of ammonia. I believe in the Traffic
5 section there are also discussion about traffic
6 control plans and so on. And that routing would
7 be determined at that time in conjunction with the
8 Compliance Project Manager and other interested
9 agencies. I think at least we can say that it
10 will follow truck routes, other than by exception.

11 MR. AJLOUNY: Are you aware that there's
12 no way to get -- there's not a ramp at the
13 Monterey and Bailey intersection? If you -- if
14 you're coming off of 101, with a truck, you can
15 come down on Bailey, but you'll be going over
16 Monterey. There's no way to get down to Monterey.
17 Are you aware of that?

18 MS. ACUTANZA: Yes. That's --

19 MR. AJLOUNY: Okay. And I'm only
20 stating this, and I wanted to make a point that
21 for clarification, are you aware of a elementary
22 school at the intersection of the proposed 101 and
23 Bailey interchange?

24 MR. DUNSTAN: You're -- I think you're
25 referring to the Encinal School?

1 MR. AJLOUNY: Yes.

2 MR. DUNSTAN: Which is just east of
3 Monterey and south of the point where Bailey
4 intersects Monterey. We're familiar with that,
5 yes.

6 MR. AJLOUNY: Yes. Do you see any
7 concern of a ammonia truck, with your expertise,
8 taking the route of 101 to Bailey and then coming
9 down Bailey to Santa Teresa, and going north on
10 Santa Teresa? I mean, that's the only way I can
11 see taking that entrance. And do you see any
12 concerns doing that?

13 MR. DUNSTAN: Can you restate that route
14 you described?

15 MR. AJLOUNY: Well, it's only the route
16 that was mentioned in -- in workshops and other
17 things, so I thought you were familiar with it.
18 It's 101 -- yeah, if they could put up the map,
19 maybe that'll even be easier. Our famous pen
20 isn't there. Well, you can't see it.

21 Do you have the one with the names on
22 it? My eyes are bad, man. I can't -- the graphic
23 is bad. Okay.

24 I'll try to explain this, because I know
25 you -- this is what I perceived to believe during

1 the workshop, 101 to the new interchange at
2 Bailey, you get off there. You're going to have
3 to come down on -- continue on Bailey, and cross
4 over on the west side of Monterey Highway. Which
5 brings you right next to the Cisco campus. Right?
6 On the right side would Cisco campus. And you'd
7 be heading towards Santa Teresa.

8 MR. DUNSTAN: I -- I follow what you're
9 describing.

10 MR. AJLOUNY: Okay.

11 MR. DUNSTAN: Yeah.

12 MR. AJLOUNY: Okay. But if you took the
13 Bailey exit, you'd have to -- you'd have to go
14 over Monterey and you would land down right next
15 to the campus of CVRP at this time. Is that true
16 or not?

17 MR. DUNSTAN: Well, it would be true if
18 the delivery truck did not take the ramp that
19 would come down onto Monterey Road. That's an
20 alternative.

21 MR. AJLOUNY: Yeah. And the point, see,
22 this is the point I wanted to make, is if you took
23 -- either way you take, if you take the Monterey
24 to Bailey, you would have to cross over the
25 railroad tracks. Is that true?

1 MR. DUNSTAN: My understanding is that
2 that grade crossing would be closed when the new
3 Bailey/Monterey overpass is opened. And that the
4 only way to get from Monterey -- from Monterey
5 onto Bailey will be to take one of the new ramps
6 that's going to be built on the east side of
7 Monterey and get up onto the overpass. So that we
8 --

9 MR. AJLOUNY: Okay. That --

10 MR. DUNSTAN: -- nobody would cross the
11 railroad tracks at that point, other than on the
12 overpass.

13 MR. AJLOUNY: That's the point I'm
14 trying to make. To get, you know, right to the
15 direction. Do you know of any other way to get
16 that ammonia truck to your facility without going
17 down the Santa Teresa street and through the
18 Bailey Santa Teresa area? Do you know of any
19 other way? Because of the construction that's
20 planned.

21 MR. DUNSTAN: Well, yes. Not -- not to
22 be -- not to be too obvious, there's Blanchard
23 Road.

24 MR. AJLOUNY: But that's going -- oh,
25 I'm sorry. Without going over the railroad

1 tracks. Because that's one of -- well, without
2 going over the railroad tracks with the ammonia
3 trucks.

4 MR. DUNSTAN: Until the -- well, yes,
5 there's another one, and that is what I believe is
6 referred to as Arterial A in the CVRP design,
7 which would be another way that a truck could turn
8 off of Monterey onto an overpass over Monterey
9 Road, and land down in the CVRP campus.

10 MR. AJLOUNY: Off Monterey Road?

11 MR. DUNSTAN: I believe that's what the
12 development maps show.

13 MR. AJLOUNY: I've studied the maps, and
14 I just wondered, you -- is there anyone here
15 that's -- Monterey Road is about 20 feet from the
16 railroad tracks. They're going to have a ramp
17 from Monterey Road to jump -- it's going to lift
18 you on a elevator --

19 MR. DUNSTAN: No. You'd actually have
20 to turn -- the configuration will be much like the
21 intersection at Bernal and Monterey, where if you
22 want to get onto Bernal from Monterey you have to
23 turn off of Monterey up to one of those ramps. It
24 -- it's the same at -- probably at Blossom Hill
25 and I don't know what -- that's a fairly typical

1 arrangement in all those roads that cross
2 Monterey, because of the presence of the railroad
3 tracks immediately on the west side.

4 MR. AJLOUNY: Would that bring you on
5 Bailey, then?

6 MR. DUNSTAN: No. That would bring you
7 down on -- I don't know what the -- the campus
8 really has been named, other than Arterial A.

9 MR. AJLOUNY: Where Blanchard is? About
10 where --

11 MR. DUNSTAN: No.

12 MR. AJLOUNY: South --

13 MR. DUNSTAN: No. It's -- it's
14 considerably south there, south of there. It's
15 about -- it's about halfway between Blanchard and
16 Bailey. It -- it's on the graphic.

17 MR. AJLOUNY: So you would be going
18 through the CVRP campus to --

19 MR. DUNSTAN: Correct.

20 MR. AJLOUNY: Okay.

21 PRESIDING MEMBER LAURIE: You have two
22 minutes, sir.

23 MR. AJLOUNY: Okay. Do you have any --
24 would any of your expert witnesses have any
25 concerns about taking that ammonia truck through

1 that campus?

2 MS. ACUTANZA: No.

3 MR. AJLOUNY: Okay. And one last thing.
4 Are you aware of the Fairchild spill years ago,
5 with chemicals in the water?

6 MR. DUNSTAN: I have heard that such an
7 event happened.

8 MR. AJLOUNY: I have a concern, living
9 in that neighborhood, of tanks being buried into
10 the ground, like CVRP --

11 PRESIDING MEMBER LAURIE: Issa --

12 MR. AJLOUNY: -- do you have that
13 concern?

14 PRESIDING MEMBER LAURIE: -- your --
15 your expressed concern is not a -- a question to
16 these folks.

17 MR. AJLOUNY: Well, I -- do you have a
18 concern burying that -- those tanks with ammonia
19 in the ground?

20 MR. DUNSTAN: I discussed that
21 previously in -- in reference to our views on the
22 changes in conditions as proposed by CVRP. Our
23 commitment to date has been that we will not put
24 any tanks in the ground.

25 MR. AJLOUNY: All right. Well, I -- I

1 agree with you. Thank you.

2 PRESIDING MEMBER LAURIE: The reporter
3 and Mr. Valkosky and others have to break. I have
4 to call for termination of your -- of your
5 questions at this time.

6 MR. AJLOUNY: I'm done.

7 PRESIDING MEMBER LAURIE: Thank you.

8 Okay. We'll go off the record.

9 (Thereupon a recess was taken.)

10 CROSS EXAMINATION

11 MR. WILLIAMS: The first question is in
12 the Traffic area. I'd like to clarify the
13 expert's assumptions on when the Metcalf plant
14 will begin construction, and when the CR -- the
15 CVRP will begin construction, in order to assess
16 construction impacts.

17 So what were your assumptions as to the
18 date of start of construction at Metcalf, and what
19 did you assume regarding construction at CVRP?

20 MS. ACUTANZA: Our assumption regarding
21 construction at Metcalf was it would be on a tier
22 schedule. It would --

23 MR. WILLIAMS: I'm asking the start
24 date.

25 MS. ACUTANZA: Didn't assume a start

1 date, because in our Conditions of Certification
2 we identify a traffic control plan related to
3 construction. So at that time, those issues would
4 be identified and clarified.

5 As far as CVRP's construction schedule,
6 they state in the DEIR that it is a five year
7 buildout of the development. Didn't know related
8 to our project when that would occur.

9 MR. WILLIAMS: I was confused by your
10 statement about the cumulative impacts of CVRP and
11 Metcalf. Could you clarify that any further, if
12 you don't know when the start dates for either of
13 them are?

14 MR. DUNSTAN: I -- I would request a
15 clarification on your points of confusion.

16 MR. WILLIAMS: Well, the point of
17 confusion is she testified to the minimal impact
18 in the neighborhood when the construction of both
19 the plant and CVRP was ongoing. So I wanted to
20 confirm what her assumptions were with respect to
21 dates.

22 MR. DUNSTAN: To what neighborhood are
23 you referring?

24 MR. WILLIAMS: Well, to the surrounding
25 neighborhood due to the impacts of the trucks and

1 construction equipment. Let's -- I think it's --
2 it's just a simple minded request to get her
3 assumption --

4 MR. HARRIS: Can you clarify which
5 neighborhoods, please.

6 MR. WILLIAMS: Excuse me.

7 MR. HARRIS: Which neighborhoods are you
8 speaking about?

9 MR. WILLIAMS: Well, let me start with
10 Bailey and Monterey Highway.

11 MS. ACUTANZA: Our assumption as far as
12 construction is we -- we would have a two-year
13 construction cycle. For about a year of that
14 time, or about 18 months of that time,
15 construction traffic would be over -- over a
16 hundred construction workers per day.

17 Our greatest construction impact might
18 be when the fill is coming in, as far as daily
19 truck -- truck volumes. And for the first two
20 months of construction, when -- when we're
21 bringing in fill, we're assuming approximately 140
22 trucks a day, 280 trips a day. Most of them we
23 would try to mitigate by requesting that they are
24 -- requiring that they come in non-peak periods.
25 But that construction period is about two months

1 long, at the -- at the very beginning of the
2 construction.

3 MR. WILLIAMS: Now, are you aware that
4 CVRP intends to begin -- excuse me. Cisco intends
5 to begin construction about November of 2001?

6 MS. ACUTANZA: I was not aware of that.

7 MR. WILLIAMS: Okay. Thank you. Enough
8 of that.

9 Question for Mr. Dunstan. When you talk
10 about meeting LORS, and let me direct your
11 testimony particularly to the city and county
12 local ordinances and regulations. What zoning do
13 you assume for the Metcalf site, and is there a
14 distinction between --

15 MR. HARRIS: Objection. That's a Land
16 Use question.

17 MR. WILLIAMS: It's -- it's a LOR
18 question. The LOR would establish the Haz Mat
19 requirement.

20 PRESIDING MEMBER LAURIE: Is the Haz Mat
21 requirement related to the zoning?

22 MR. WILLIAMS: It seems to me that the
23 permitted hazard material storage would depend on
24 the zoning. For example, if you were in heavy
25 industrial you would be permitted different

1 quantities and different toxic materials than if
2 you were in campus industrial.

3 You have made no such distinction. Is
4 that your testimony?

5 MR. HARRIS: Is there a question, or can
6 you restate it?

7 MR. WILLIAMS: Have you made any
8 distinction between campus industrial and heavy
9 industrial zoning in stating that you comply with
10 local ordinances and regulations?

11 MR. DUNSTAN: The analysis that we are
12 sponsoring --

13 MR. WILLIAMS: You can answer it yes or
14 no.

15 MR. DUNSTAN: -- is -- please state the
16 question one more time.

17 MR. WILLIAMS: Have you made any
18 distinction in the quantities of hazardous
19 material to be stored between a campus industrial
20 zoning and a heavy industrial zoning?

21 MR. DUNSTAN: No.

22 MR. WILLIAMS: Thank you. I did not
23 receive, to the best of my knowledge, a pre-
24 meeting copy of Haz Mat 10. Mr. Dunstan, when was
25 that submitted to the parties?

1 MR. DUNSTAN: Today.

2 MR. WILLIAMS: Well, doesn't that meet
3 the same objections that you offered regarding the
4 prospective change in COC's?

5 MR. HARRIS: Objection, argumentative.

6 PRESIDING MEMBER LAURIE: What's your
7 point, Mr. Williams? What do you want?

8 MR. WILLIAMS: We -- we spent two hours
9 arguing about the surprise --

10 PRESIDING MEMBER LAURIE: What do you
11 want?

12 MR. WILLIAMS: I -- I want them to say
13 that they did just what they accused the Staff of
14 doing --

15 PRESIDING MEMBER LAURIE: That's not --
16 that -- that's not necessary. That is
17 argumentative. Go on, please.

18 MR. WILLIAMS: So I can establish then,
19 by questioning, that they did indeed commit the
20 same surprise that they -- but I --

21 PRESIDING MEMBER LAURIE: That's
22 argumentative. I will not allow --

23 MR. WILLIAMS: -- will you stipulate --

24 PRESIDING MEMBER LAURIE: -- I will not
25 allow that line of questioning.

1 MR. WILLIAMS: Okay. It is on the
2 record that they submitted their modified COC --

3 PRESIDING MEMBER LAURIE: Yes, it is.

4 MR. WILLIAMS: -- today. Thank you.

5 I think I'm making real progress. I've
6 done three things and it's only five minutes. So
7 excuse me.

8 PRESIDING MEMBER LAURIE: I'm sorry?

9 MR. WILLIAMS: I am now shifting to the
10 rebuttal testimony of the Applicant with respect
11 to the testimony of CVRP. Which of the panel
12 participated in preparation of the rebuttal
13 testimony for taking the Coyote Valley Hazardous
14 Material Management submittal?

15 MR. DUNSTAN: If you're talking about
16 the document in its entirety, all of us did.

17 MR. WILLIAMS: Okay. That's -- now, the
18 purpose of my questioning is to determine your
19 understanding of this document, and whether you
20 have seen a better quality document than this one.
21 Because I felt your -- well, so my question is
22 this, to the -- to the first person.

23 Have you -- can you direct me to a piece
24 of work that is better and more clear --

25 MR. HARRIS: Objection, argumentative.

1 PRESIDING MEMBER LAURIE: Sustained.

2 MR. WILLIAMS: Then I have to ask in
3 more detail.

4 What -- what is the nature of the gap in
5 the Coyote Valley Research property analysis, and
6 can you direct me to where your testimony is
7 better?

8 MR. HARRIS: Objection, argumentative.

9 HEARING OFFICER VALKOSKY: Mr. Williams,
10 what point are you trying to make?

11 MR. WILLIAMS: My point, sir, is that
12 this is among the best submittals on hazardous
13 material that I have seen. I believe it's better
14 than the Staff's submittal. And yet the Applicant
15 was very critical of it, so I would like to
16 establish the basis for the Applicant's criticism
17 of --

18 HEARING OFFICER VALKOSKY: All right.
19 Then why don't you just ask them on which points
20 of the CVRP analysis they disagree, and why.

21 MR. WILLIAMS: Okay.

22 PRESIDING MEMBER LAURIE: And to the
23 extent that that's not already been done.

24 MR. WILLIAMS: Yes, sir. Okay.
25 Could you briefly state the major points

1 on which you disagree?

2 MR. HARRIS: Objection. This is in the
3 written testimony. All four points are in the
4 written testimony.

5 MR. WILLIAMS: Okay. I have been urged
6 by Ms. Grueneich to desist from this line of
7 questioning, so I will do so, since it's her
8 testimony, and I support it very strongly.

9 Let me direct your attention now to
10 Figure 2 of this testimony.

11 MR. HARRIS: Are you referring to our
12 rebuttal testimony, or something else?

13 MR. WILLIAMS: No. The CVRP submittal.

14 MR. HARRIS: What page, Bob?

15 MR. WILLIAMS: Excuse me. It's the --
16 in the copy I have it's the last figure, the
17 figures appeared in reverse order, following page
18 18.

19 Mr. Dunstan, would you care to state
20 what you deem to be the significance of Figure 2?

21 MR. DUNSTAN: I'm still looking.

22 Appendix B -- what page --

23 (Inaudible asides.)

24 MR. WILLIAMS: No, I believe it's in
25 Appendix A.

1 MR. HARRIS: What's the title of the
2 figure?

3 MR. WILLIAMS: The title of the figure
4 is Transportation Injury Risk Profile, CEC 75 ppm
5 criteria.

6 MR. HARRIS: Appendix B.

7 MR. WILLIAMS: Could your risk analysis
8 expert please state the implication of that
9 figure.

10 MR. HARRIS: Objection. This is not
11 this witness' testimony.

12 MR. WILLIAMS: I want to see if they
13 understood the report they critiqued.

14 HEARING OFFICER VALKOSKY: Why don't we
15 just see if the witnesses agree or disagree with
16 the data displayed on this, on Figure 7.

17 MR. WILLIAMS: Take that as your
18 question.

19 MR. SALAMY: The text of this document
20 did not present enough methodology assumptions and
21 calculation procedures for us to base an opinion
22 on whether this figure is accurate or not.

23 MR. WILLIAMS: Did -- did you not feel
24 that Ms. Grueneich's testimony addressed that
25 point?

1 MR. HARRIS: He answered the question.

2 He said he has no opinion on --

3 MR. WILLIAMS: Well, I will move on to
4 another topic, but I expect to come back to this
5 in Staff and in CVRP testimony.

6 I feel that the -- since this is my main
7 opportunity to question the Applicant and the
8 competence of his witnesses with respect this
9 submittal, I wanted to establish the showing on
10 the record.

11 Let me move to another topic, since I
12 was expecting to spend a little bit more time
13 there.

14 Let me ask about hazard material --
15 hazardous material response teams, HIT teams.
16 What sort of equipment and material will your
17 onsite HIT team be provided?

18 MR. HARRIS: Objection. There is no
19 onsite HIT team, and this is outside the scope of
20 the testimony of the witness.

21 MR. WILLIAMS: I thought -- there is no
22 onsite -- what is your quick response team? I
23 thought it was onsite.

24 HEARING OFFICER VALKOSKY: That, Mr.
25 Williams, as we've been over numerous times today,

1 is not the HIT team. The HIT team is a Hazardous
2 Incident Team, or something like that, which I
3 believe --

4 MR. WILLIAMS: Of the city.

5 HEARING OFFICER VALKOSKY: -- of the
6 city, yes.

7 MR. WILLIAMS: Forgive me. What do you
8 call your -- your response team that receives the
9 training?

10 MR. DUNSTAN: There is no name assigned
11 to the individuals that will receive that
12 training.

13 MR. WILLIAMS: Well, how -- how should I
14 refer to them in my question?

15 MR. DUNSTAN: Perhaps trained staff
16 personnel.

17 MR. WILLIAMS: Okay. Could you describe
18 the equipment the trained staff personnel will
19 have?

20 MR. DUNSTAN: I would refer you to the
21 material presented in the Worker Safety section of
22 the AFC.

23 MR. WILLIAMS: And in particular, is
24 there any hazardous materials handling gear? How
25 -- how does the --

1 MR. HARRIS: Object on the basis that
2 it's a Worker Safety question.

3 MR. WILLIAMS: I think it's a Hazardous
4 Material question. What credit do you take for
5 the response of this trained group of people --

6 PRESIDING MEMBER LAURIE: Let me
7 interrupt at this point. We will finish at least
8 CEC Staff testimony tonight. At least. What I
9 would ask is that you consider your order of
10 priorities, because every minute that we continue
11 with these folks is less time that you're going to
12 get to question those other witnesses that you
13 deem important.

14 MR. WILLIAMS: Yes, sir. I -- I
15 appreciate your care for the Staff of the CEC, and
16 I think we should exercise equal care for the
17 citizens of the vicinity of the power plant.

18 PRESIDING MEMBER LAURIE: That -- that's
19 my ruling.

20 MR. WILLIAMS: Yes, sir. So let me just
21 check my notes, then, to see how I can abbreviate
22 the further questioning of the Applicant.

23 Could you briefly describe the nature of
24 your vessel for containing the ammonia?

25 MR. DUNSTAN: We've described two

1 possible configurations. One would be a single-
2 walled vessel housed within a secondary
3 containment of either steel or reinforced
4 concrete, with a cover that would have a vent
5 opening, I believe one foot in diameter.

6 Alternatively, we would employ a double-
7 walled tank.

8 MR. WILLIAMS: Could you describe why
9 you haven't made up your mind on this crucial
10 safety issue?

11 MR. DUNSTAN: Both alternatives are
12 available to us, and the final decision will
13 depend on a number of commercial and schedule
14 issues.

15 MR. WILLIAMS: Why wouldn't you take the
16 safer option, since the cost of this tank is --

17 MR. HARRIS: Objection, argumentative.

18 HEARING OFFICER VALKOSKY: Sustained.

19 MR. WILLIAMS: Well, what --

20 HEARING OFFICER VALKOSKY: That presumes
21 that one has been established as being safer than
22 the other.

23 MR. WILLIAMS: May I direct you to the
24 CVRP testimony, which shows the double vessels are
25 safer than the single-wall vessels.

1 HEARING OFFICER VALKOSKY: Fine. We're
2 -- we're aware that that's that contention. That
3 is a piece of evidence. It is not conclusive on
4 that point at this time.

5 MR. WILLIAMS: Yes, sir.

6 Let me ask if any of the people in this
7 panel personally evaluated any transportation
8 accident probabilities.

9 MS. ACUTANZA: No, we did not. We
10 looked at accident rates, current accident rates.

11 MR. WILLIAMS: Could you describe in
12 just a little more detail your source of data for
13 current accident rates?

14 MS. ACUTANZA: We got information both
15 from Caltrans and the City of San Jose. Their
16 accident statistics for a period of nine --
17 between 1994 and 1998.

18 MR. WILLIAMS: And what was the furthest
19 distance that you did traffic calculations from
20 the plant site?

21 MR. HARRIS: Objection. I'm not sure I
22 understand the question. Traffic calculations?

23 MR. WILLIAMS: Excuse me. These
24 accident -- in what proximity to the plant site
25 did you consider traffic accident calculations?

1 MS. ACUTANZA: We looked at accident
2 rates on U.S. 101 in San Jose, and that's about as
3 far as we went. That's the furthest away from the
4 site.

5 MR. WILLIAMS: This would be
6 approximately ten miles down 101, or what
7 distance?

8 MS. ACUTANZA: It's in the AFC. And I
9 can't find --

10 MR. WILLIAMS: There -- there are many
11 things in the AFC, including obsolete and
12 superseded figures. I hope the expert would know
13 what --

14 MR. HARRIS: Objection. You're
15 testifying again, Bob.

16 HEARING OFFICER VALKOSKY: Sustained.

17 MR. WILLIAMS: The -- I will stop at
18 this time. Thank you.

19 PRESIDING MEMBER LAURIE: Thank you,
20 sir.

21 MR. HARRIS: Is it -- redirect?

22 HEARING OFFICER VALKOSKY: Yes. Well,
23 one second. Mr. Garbett, again, you have not
24 indicated your desire to cross examine. We will
25 let you have a couple of questions. Two.

1 MR. GARBETT: Could I have what I had
2 anticipated and waive the questioning of the next
3 two sets of --

4 PRESIDING MEMBER LAURIE: You -- you
5 have two questions. And/or five minutes,
6 whichever comes first.

7 MR. GARBETT: Thank you for the five
8 minutes. I'll finish before then.

9 HEARING OFFICER VALKOSKY: Speak into
10 the microphone, sir.

11 CROSS EXAMINATION

12 MR. GARBETT: In regards to hazardous
13 materials, did you consider janitorial supplies as
14 being one source of hazardous materials?

15 MR. DUNSTAN: Let me ask if you're
16 referring to the types of materials that are used
17 in domestic cleaning of the office areas and the
18 bathrooms, as opposed to those that might be used
19 in the actual maintenance facilities?

20 (Inaudible asides.)

21 MR. DUNSTAN: The answer is no.

22 MR. GARBETT: Thank you. You've
23 submitted many hazardous material sheets that are
24 OSHA approved. In regards to polymers, have you
25 considered after they come out of the container,

1 the hazards to people in any of your analysis?
2 For instance, in the plume from the exhaust top.

3 MR. DUNSTAN: Our review of the
4 inventory of chemicals we intend to use in the
5 facilities does not include any polymers.

6 MR. GARBETT: They did in the PSA and
7 FSA that I've seen.

8 In the ammonia tanks, you've talked
9 about secondary containment. Will this contain
10 the exact amount that the tanks hold in ammonia in
11 the secondary containment?

12 MR. DUNSTAN: No. In fact, I believe
13 you'll see in one of the Conditions of
14 Certification criteria for the contents of the
15 tank in terms of -- or the contents of the
16 containment, in terms of inventory of the vessel,
17 in addition to rainwater.

18 MR. GARBETT: Will that also go and
19 include allowance for any suppression spray in the
20 event of rupture of the tanks?

21 MR. DUNSTAN: Containment areas that
22 include suppression spray systems will be designed
23 to contain the volume contributed by the
24 suppression spray system.

25 MR. GARBETT: Thank you.

1 With the particular delivery of ammonia,
2 the aqueous ammonia, as you up the concentration
3 level, or you lower the concentration level, is
4 not the traffic accident rate of delivery vehicles
5 more of a risk factor than the actual percentage
6 of volume in the solution?

7 MR. DUNSTAN: I don't believe the
8 vehicles know what's in the tanks.

9 MR. GARBETT: But isn't the accident
10 rate greater than you might say the storage
11 conditions, or the use in the plant?

12 MR. DUNSTAN: If -- if I understand your
13 question, I think my answer would have to be the
14 same. The vehicle doesn't know what it's
15 carrying.

16 MR. GARBETT: Well -- yeah, what I'm --
17 yeah, the number of trips that you're taking
18 creates a greater accident rate for the vehicles,
19 is what I'm trying to --

20 PRESIDING MEMBER LAURIE: I -- I'll
21 sustain an objection to argumentative --

22 MR. HARRIS: Objection.

23 MR. GARBETT: With the Blanchard Road --

24 PRESIDING MEMBER LAURIE: That's all you
25 get, sir. Your -- your time's up. Thank you.

1 Mr. Harris, you have five minutes.

2 MR. GARBETT: May I raise an objection
3 that I have been treated unfairly.

4 PRESIDING MEMBER LAURIE: Yes. Your
5 objection is noted, sir.

6 Mr. Harris, you have five minutes of
7 redirect.

8 MR. HARRIS: Thank you.

9 PRESIDING MEMBER LAURIE: And recross
10 will be maximum three minutes per party.

11 Mr. Harris.

12 REDIRECT EXAMINATION

13 MR. HARRIS: Mr. Salamy, in terms of
14 ammonia levels at the property line and the worst
15 case release scenario, what level would you
16 expect?

17 MR. SALAMY: We would expect a maximum
18 concentration of 13.4 parts per million.

19 MR. HARRIS: And what is the CEC's
20 significance criteria?

21 MR. SALAMY: Seventy-five parts per
22 million.

23 MR. HARRIS: So it will be at 13.4
24 compared to 75. Is that about 17 percent of the
25 criteria, significance criteria?

1 MR. SALAMY: I believe so.

2 MR. HARRIS: Okay. Ms. Acutanza, in the
3 documents that were given to you by Molli Dent of
4 the city, on Table 5, she provided transportation.
5 Do you have that document in front of you?

6 Can you read Statement 5A, please.

7 MS. ACUTANZA: Under 5, Transportation
8 A, it says, This project will have insignificant
9 traffic impact.

10 MR. HARRIS: So it's the opinion of the
11 City of San Jose there'll be insignificant traffic
12 impacts. Is that correct?

13 MS. ACUTANZA: Correct.

14 MR. HARRIS: The second document given
15 to you by Ms. Dent, on paragraph 3, she talked
16 about an unobstructed access road, and the
17 sentence goes on to say the access road shall be
18 -- shall be to the satisfaction of the City of San
19 Jose Fire Department, as per adopted fire codes.

20 Are you aware of any adopted fire codes
21 that require a second access road?

22 MS. ACUTANZA: I am not.

23 MR. HARRIS: Are you aware of any laws,
24 ordinances, regulations or standards requiring a
25 second access road?

1 MS. ACUTANZA: I am not.

2 MR. HARRIS: And, again, is the Western
3 Access Road required for this project to be in
4 compliance with LORS?

5 MS. ACUTANZA: It is not required.

6 MR. HARRIS: Thank you.

7 In terms of the Hazardous -- the HIT
8 team, Hazardous Materials Incident team, Mr.
9 Dunstan, is it correct that discussion of the
10 address of the HIT team is located in Section
11 8.12.6.2.3 of the AFC? Trust me.

12 MR. DUNSTAN: Yes.

13 MR. HARRIS: And is it also true that
14 that address is located in Section 8.8.1.7.3 of
15 the AFC?

16 MR. DUNSTAN: Yes.

17 MR. HARRIS: And it may be -- thank you.

18 Mr. Tornatore, in terms of HAZ-2,
19 there's a discussion about Santa Clara County's
20 role, and the suggestion was made that Santa Clara
21 was approving some documents. Can you identify
22 the -- the acronym used before was CUPA. Can you
23 state what the CUPA is?

24 MR. TORNATORE: Santa Clara County is
25 the -- oh, I'm sorry. Santa Clara County is the

1 -- is the CUPA for this area. The CUPA -- CUPA is
2 the Certified Unified Program Agency, and what
3 that is is a delegation by the state --

4 MR. HARRIS: That's --

5 MR. TORNATORE: -- to DTSC to administer
6 a variety of things related to hazardous
7 materials.

8 MR. HARRIS: So the state agency,
9 Department of Toxic Substance Control, has
10 delegated that authority to Santa Clara County as
11 the CUPA?

12 MR. TORNATORE: Yes.

13 MR. HARRIS: So pursuant to state law
14 they have, as a CUPA, a role to play, and that's
15 -- is that correct?

16 MR. TORNATORE: They would -- they would
17 -- in regards to the RMP, they would be the
18 administrative agency.

19 MR. HARRIS: So as the administrative
20 agency, then, there's no discretion to eliminate
21 them from HAZ-2; is that correct?

22 MR. TORNATORE: Correct.

23 MR. HARRIS: Thank you.

24 I have nothing further.

25 HEARING OFFICER VALKOSKY: Staff,

1 recross.

2 MS. WILLIS: We don't have any
3 questions. Thank you.

4 HEARING OFFICER VALKOSKY: City of San
5 Jose, recross?

6 Ms. Grueneich.

7 MS. GRUENEICH: No.

8 HEARING OFFICER VALKOSKY: Mr. Scholz.

9 Mr. Ajlouny, recross?

10 Mr. Garbett. Within the scope of the --

11 MR. GARBETT: I'll pass.

12 HEARING OFFICER VALKOSKY: Thank you.

13 Mr. Williams.

14 MR. WILLIAMS: Being some combination of
15 stupid and not sufficiently chastised, I will ask
16 one question.

17 RECROSS EXAMINATION

18 MR. WILLIAMS: You -- do you have any
19 explanation, any of the people of the panel, as to
20 why the calculated ammonia concentrations at the
21 site boundary are greater in the CVRP testimony
22 than your own? The answer --

23 MR. DUNSTAN: We can't tell how they got
24 to that point.

25 MR. WILLIAMS: Thank you.

1 Then one more request out of fairness,
2 Dr. Valkosky. Is there any possibility that we
3 could randomize the order of cross examination as
4 we go through the Staff testimony? I feel like
5 I've ended up last virtually every time, because
6 the letter of my alphabet is W, or W is the first
7 letter in --

8 PRESIDING MEMBER LAURIE: Well, we -- we
9 can do that, but I'd also suggest, you know, you
10 -- you folks are working together on a regular
11 basis, and you can -- you can decide, you can
12 divide up the -- the questions, depending upon
13 what your interests are.

14 But what we are going to start to do is
15 we're going to start to equalize time. So I
16 understand the problem you raised, Mr. Williams.
17 I -- I respect that. And what we're going to do
18 is make sure everybody has equal time.

19 HEARING OFFICER VALKOSKY: As far as the
20 end of the alphabet, I'd like you to note that my
21 name starts with V.

22 (Laughter.)

23 HEARING OFFICER VALKOSKY: At this time,
24 Mr. Harris, are there any exhibits you'd like to
25 move into evidence?

1 MR. HARRIS: Yes, there are. I'd like
2 to move in Exhibit 8, which is our -- the whole of
3 our 2A testimony. I think we've moved it in in
4 parts, but if there's no objection I'd like to
5 make sure the entire 2A is admitted at this point.

6 HEARING OFFICER VALKOSKY: Okay. So
7 that is Exhibit 8. Is there objection?

8 Seeing none, that's received.

9 (Thereupon Exhibit 8 was received
10 into evidence.)

11 MR. HARRIS: The second item that I
12 would like to move into evidence, have admitted,
13 is Item 36, which is our rebuttal testimony.

14 HEARING OFFICER VALKOSKY: Is there
15 objection to the admission of Exhibit 36?

16 MR. HARRIS: Thirty-six is our rebuttal
17 testimony.

18 HEARING OFFICER VALKOSKY: Is it 36
19 we're talking, for sure? Okay. No objection,
20 that's received.

21 (Thereupon Exhibit 36 was received
22 into evidence.)

23 MR. HARRIS: And I think 34, as well.
24 It's the Applicant's rebuttal testimony on Water.

25 HEARING OFFICER VALKOSKY: Okay. Is --

1 MR. HARRIS: And Haz Mat. I'd move that
2 in at this time, as well.

3 HEARING OFFICER VALKOSKY: Is there
4 objection to admission of Exhibit 34?

5 Seeing none, that's received.

6 (Thereupon Exhibit 34 was received
7 into evidence.)

8 MR. HARRIS: Mr. Valkosky, is there
9 still an outstanding issue regarding CVRP's
10 reserving a right for a motion to strike?

11 Okay, so there's no motion? So the
12 document's admitted.

13 HEARING OFFICER VALKOSKY: That has been
14 admitted into evidence.

15 MR. HARRIS: Thank you.

16 HEARING OFFICER VALKOSKY: That's
17 correct.

18 PRESIDING MEMBER LAURIE: No. We have
19 -- go ahead. We'll --

20 HEARING OFFICER VALKOSKY: Nothing else
21 for Applicant's panel of witnesses? Thank and
22 excuse you.

23 MS. WONG: I have questions --

24 PRESIDING MEMBER LAURIE: Yes. Well,
25 no, ma'am. You -- you go ahead and make your --

1 your comments --

2 MS. WONG: I cannot --

3 PRESIDING MEMBER LAURIE: Well, these
4 people are excused. If you have questions, you
5 can ask -- ask the Committee.

6 MS. WONG: That means I have to wait
7 until the end of the meeting?

8 PRESIDING MEMBER LAURIE: No. If -- if
9 you have a comment, this is the time that you want
10 to make your --

11 MS. WONG: It is -- it is a question. I
12 can read the question right now, and leave you to
13 decide when to answer my question.

14 PRESIDING MEMBER LAURIE: Yes, ma'am.
15 Please do that.

16 HEARING OFFICER VALKOSKY: Could you
17 identify yourself for the record, please.

18 MS. WONG: I am. Suzanna Wong, and I'm a
19 local resident.

20 HEARING OFFICER VALKOSKY: Repeat your
21 name one more time, please.

22 MS. WONG: Suzanna Wong. Last name
23 spelled W-o-n-g.

24 I want to know from the Applicant
25 whether their traffic analysis has accounted for

1 any impact to the bicycle lanes that we citizens
2 use, and any differences between accidents of --
3 of a vehicle with a regular car versus one that
4 contain hazardous materials. And the third is any
5 difference in terms of the recognition that the
6 accidents might involve kids who do not know the
7 kind of dangerous situations that they are in, and
8 hence would not be able to handle the -- the
9 accidents as well.

10 So that is my first question.

11 My second question is regard to the
12 hazardous materials. And my question is the
13 follows. Given that the water pipes did burst in
14 Palo Alto in the 1989 earthquake, and given that
15 the El Salvador earthquake did occur, and given
16 that the gas pipeline in Bellingham, Washington,
17 did occur even without any earthquake but due to
18 corrosive conditions of the pipes, I wonder how
19 they would explain to a local resident why we
20 would not be concerned about having these
21 pipelines, and having these hazardous materials,
22 and having these large volumes of natural gas
23 passing through pipelines, and possibly
24 pressurized, into the power plant in my
25 neighborhood.

1 Those are my questions.

2 PRESIDING MEMBER LAURIE: Thank you, Ms.
3 Wong.

4 At this time we want some time
5 estimates. Time estimates of this direct, time
6 estimates of Mr. Radis' direct, time estimates of
7 Mr. Radis' cross by Applicant. And then we're
8 going to see how much -- how we're going to divide
9 up our time.

10 MS. WILLIS: We'd probably have probably
11 no more than 20 minutes on direct for this panel.

12 PRESIDING MEMBER LAURIE: And -- and why
13 does it take 20 minutes? Do you have -- do you
14 have a lot of corrections?

15 MS. WILLIS: No. We could -- we'll try
16 to go through it as quickly as possible.

17 PRESIDING MEMBER LAURIE: Well, to the
18 extent that the testimony is -- is there.

19 MS. WILLIS: Okay. Well --

20 PRESIDING MEMBER LAURIE: And Mr.
21 Valkosky --

22 MS. WILLIS: We just have three
23 witnesses, so --

24 PRESIDING MEMBER LAURIE: Mr. Valkosky
25 likes to summarize it. We don't have to do that.

1 MS. WILLIS: Okay.

2 PRESIDING MEMBER LAURIE: Everybody has
3 -- has read the testimony. So you want to put
4 your witnesses in --

5 MS. WILLIS: We'll try 10 to 15.

6 PRESIDING MEMBER LAURIE: Okay.

7 MS. WILLIS: And we don't have any -- I
8 don't think maybe any questions for Mr. Radis on
9 cross, if any. We may have a few.

10 PRESIDING MEMBER LAURIE: Okay. Coyote
11 Valley, direct of Mr. Radis?

12 MS. GRUENEICH: Ten -- 10 to 15, and the
13 reason why is that in light of what we've heard
14 tonight we think that he can orally offer some
15 suggestions on the conditions which will bring us
16 closer.

17 PRESIDING MEMBER LAURIE: Do you --
18 estimated cross of Mr. Radis.

19 MR. HARRIS: I'd say that I'll try to
20 keep it to 10, but it may be 15, at most.

21 PRESIDING MEMBER LAURIE: Okay. I
22 assume the Intervenors are not going to have
23 significant cross examination of Mr. Radis. Is --
24 is that fair?

25 MR. WILLIAMS: Yes, sir.

1 MS. GRUENEICH: Did -- excuse me. I'm
2 not sure if I was supposed to have spoken up.
3 I'll probably have 10 minutes of crows of the
4 Staff.

5 PRESIDING MEMBER LAURIE: Yeah. I
6 haven't gotten to that yet. We're -- we're trying
7 to figure out how to fairly divide up the cross
8 examination of Staff, because we know that's
9 important.

10 (Pause.)

11 HEARING OFFICER VALKOSKY: Okay. Off
12 the record.

13 (Off the record.)

14 MS. WILLIS: Dr. Alvin Greenberg.
15 (Thereupon Steven Brown, Rick Tyler,
16 and Alvin Greenberg were, by
17 the reporter, sworn to tell the
18 truth, the whole truth, and nothing
19 but the truth.)

20 MS. WILLIS: Thank you.

21 TESTIMONY OF

22 STEVEN BROWN

23 called as a witness on behalf of Commission Staff,
24 having been first duly sworn, was examined and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MS. WILLIS:

3 Q Mr. Brown, could you please state your
4 name for the record?

5 A Steven J. Brown.

6 MS. WILLIS: Actually, could I ask Mr.
7 Tyler and Mr. Brown to change places just for a
8 few moments. Sorry about that.

9 BY MS. WILLIS:

10 Q Was a statement of your qualifications
11 attached to this testimony?

12 A Yes, it was.

13 Q And in a sentence, could you please
14 state your education and experience.

15 A Yes. I have a Bachelor's and Master's
16 degree in Civil Engineering, with a focus in
17 transportation, and 13 years of experience in the
18 transportation field.

19 Q Thank you. Did you prepare the
20 testimony entitled Traffic and Transportation in
21 the Final Staff Assessment, marked Exhibit 7?

22 A Yes, I did.

23 Q And do the opinions contained in your
24 testimony represent your best professional
25 judgment?

1 A Yes, they do.

2 Q Could you please state your findings
3 related to the -- to transportation project
4 impacts in this case.

5 A Yes. During construction the project
6 will have approximately 400 construction workers
7 during peak periods. Most of those project trips
8 are expected to be outside of the traditional peak
9 hours with construction workers arriving prior to
10 7:00 a.m. and departing prior to 4:00 p.m. The
11 total project trips during peak construction are
12 expected to be 710 per day, with approximately 100
13 of those being truck trips.

14 The -- those increases in traffic volume
15 will not cause any of the studied roadways to
16 violate the CMP, or Congestion Management
17 standards. However, a portion of Monterey Highway
18 would degrade from level of service C to level of
19 service D as a consequence of project construction
20 traffic.

21 During the import of fill, there's
22 expected to be 280 truck trips per day. And that,
23 however, would occur prior to the peak
24 construction period. That would be one of the
25 initial activities.

1 During operation of the plant, it is
2 expected that there will be approximately 40
3 vehicle trips per day, with -- with two of those
4 being truck trips on a typical day. Due to the
5 rotating shifts, most of the project trips will
6 occur outside of the typical commute hours.

7 And, finally, the City of San Jose has
8 requested that the new -- that the new roadway
9 connection to Santa Teresa Boulevard be the
10 primary point of access when the plant is
11 operational, with Blanchard Road being used only
12 as an emergency access route.

13 Q Did you find any significant adverse
14 impacts to the environment in regards to
15 transportation?

16 A No, I did not.

17 Q And is the Metcalf project in compliance
18 with all transportation LORS?

19 A Yes, it is.

20 Q The public has voiced their concern
21 about the transportation of hazardous materials.
22 Did you analyze the road conditions for the most
23 probable route?

24 A Yes, I did. I looked at the conditions
25 along the -- what we'd call the initial route,

1 which would be Highway 101 to Bernal to Monterey
2 Road to Blanchard Road. The -- the -- those
3 roadways would -- setting aside Blanchard Road for
4 a minute, the other roadways are designed such
5 that they have adequate pavement width and
6 shoulder area to accommodate large truck vehicles.
7 Blanchard Road is the exception, in that it is not
8 a -- is not designed to typical public road
9 standards. However, it is adequate for the few
10 number of trips that would be using it to access
11 the site.

12 Q And you -- did you personally observe
13 the road conditions?

14 A Yes, I did.

15 Q Did you notice any hazards or obstacles
16 to truck travel in that area?

17 A No.

18 Q Are you proposing any conditions in
19 regards to the transportation of hazardous
20 materials?

21 A Yes, and they're sitting in front of
22 Rick here.

23 I'm sorry. Can you repeat the question?

24 Q Did you -- are you proposing -- I'm
25 sorry. Are you proposing any conditions in

1 regards to the transportation of hazardous
2 materials?

3 A Yes. Namely, that the project comply
4 with all state and federal regulations that apply
5 to the transport of hazardous materials.

6 Q And is that Condition Number 3?

7 A Yes.

8 Q Did you propose any Conditions of
9 Certification to ensure safe crossing at the
10 railroad grade crossing?

11 A Yes, we did. Condition 4,
12 Transportation Condition 4, requires the project
13 owner to install railroad crossing warning
14 equipment in accordance with Union Pacific
15 Railroad and local and federal design standards.

16 Q And, finally, in your professional
17 opinion, is the use of a flagperson a safe interim
18 measure at that crossing?

19 A Yes, it is. As an interim measure it is
20 adequate.

21 MS. WILLIS: Thank you.

22 I'd like to move to Mr. Tyler and Dr.
23 Greenberg.

24 ///

25 ///

1 TESTIMONY OF
2 RICK TYLER and ALVIN GREENBERG
3 called as a witness on behalf of Commission Staff,
4 being first duly sworn, was examined and testified
5 as follows:

6 DIRECT EXAMINATION

7 BY MS. WILLIS:

8 Q Mr. Tyler, could you please state your
9 name for the record.

10 A Yes. My name is Rick Alan Tyler.

11 Q And was a statement of your
12 qualifications attached to this testimony?

13 A Yes, it was.

14 Q Could you briefly state your experience?

15 A Yes. I have a BS degree in Mechanical
16 Engineering and I've worked for -- I have 23 years
17 experience working for the State of California.

18 Q Did you prepare or assist in preparing
19 the testimony entitled Hazardous Materials
20 Management in the Final Staff Assessment?

21 A Yes, I did. I prepared the PSA and --
22 and, with Dr. Greenberg, the FSA.

23 Q And do the opinions contained in your
24 testimony represent your best professional
25 judgment?

1 A Yes, they do.

2 Q Dr. Greenberg, could you please state
3 your name for the record?

4 A Alvin J. Greenberg.

5 Q Is a statement of your qualifications
6 attached to your testimony?

7 A Yes, it is.

8 Q Actually, it wasn't. I'd like to --

9 (Laughter.)

10 DR. GREENBERG: You told me that you did
11 attach it.

12 MS. WILLIS: Sorry. That was something
13 that I failed to do before we started, was to --

14 PRESIDING MEMBER LAURIE: I don't think
15 I've ever heard that before.

16 (Laughter.)

17 DR. GREENBERG: Does that mean --

18 MS. WILLIS: I don't think I --

19 DR. GREENBERG: -- does that mean I have
20 to make a special deal with -- with the
21 independent prosecutor, like Clinton did, for
22 lying under oath?

23 MS. WILLIS: I actually need to
24 apologize to my witness. We do -- we have passed
25 that out, but it has not -- was not part of the

1 original FSA.

2 PRESIDING MEMBER LAURIE: Any objections
3 to Mr. Greenberg's ability to testify as an
4 expert?

5 No objections noted.

6 MS. WILLIS: Thank you.

7 PRESIDING MEMBER LAURIE: Ms. Willis,
8 continue.

9 BY MS. WILLIS:

10 Q Did you -- could you briefly state your
11 education and experience. I'm sorry.

12 A Yes. Maybe I ought to do it a little
13 more than just briefly. I have a Ph.D. in
14 chemistry from UC Med Center in San Francisco. I
15 also conducted three years of post doctoral work
16 in toxicology at UC Med Center in San Francisco.
17 I served as Assistant Deputy Chief for Cal-OSHA in
18 the Jerry Brown Administration. I also served as
19 a member of the Cal-OSHA Standards Board as an
20 appointee of the governor.

21 I've conducted numerous evaluations of
22 hazardous materials use, including offsite
23 consequence analyses and transportation risk
24 assessments. I provide consultation services in
25 the past and presently on hazardous materials

1 management for ten power plants in California for
2 the California Energy Commission. I presently
3 provide consultation services to state and local
4 government, environmental groups, and some
5 industries.

6 I'm a California Registered
7 Environmental Assessor, and a board -- and board
8 certified as a qualified environmental
9 professional, with 21 years experience in
10 toxicology risk assessment.

11 Q Thank you. Did you prepare or assist in
12 preparing the testimony entitled Hazardous
13 Materials Management in the Final Staff
14 Assessment?

15 A Yes, I did.

16 Q Do you have any changes to your written
17 testimony that you're proposing today?

18 MS. WILLIS: And I'd like to -- I think
19 the changes in the conditions have already been
20 passed out. Do we need to mark -- we don't -- do
21 we need to mark that as a separate exhibit?

22 HEARING OFFICER VALKOSKY: We do not.
23 As I understand it, it is your intention to
24 replace the ones attached --

25 MS. WILLIS: I believe so. Is that --

1 HEARING OFFICER VALKOSKY: -- in the FSA
2 with the ones you've passed out?

3 MS. WILLIS: With the changes.

4 HEARING OFFICER VALKOSKY: Yeah.

5 BY MS. WILLIS:

6 Q Do the changes in the proposed
7 conditions in any way change your overall
8 conclusions?

9 A No, not at all.

10 Q Do the opinions contained in your
11 testimony represent your best professional
12 judgment?

13 A Yes.

14 Q And did you review the Applicant's
15 proposed changes to the HAZ-10 condition?

16 A Yes.

17 Q Is that acceptable to you?

18 A Yes, it is.

19 Q Thank you. Can you briefly explain how
20 you evaluated hazardous materials use and
21 handling?

22 A Very briefly, I evaluated each hazardous
23 materials that was listed as being proposed for
24 use by the Applicant in the AFC. I looked at the
25 quantity, the state, what it planned to use,

1 engineering controls and administrative controls
2 to prevent releases, and engineering and
3 administrative controls to minimize the impact
4 should a release occur.

5 Q Did you conclude that there were any
6 hazardous materials that could potentially result
7 in offsite consequences?

8 A Yes, I did.

9 Q And which -- which materials were those?

10 A There were two substances that I felt
11 that could result, or potentially result in
12 offsite consequences.

13 One of them, natural gas, because, after
14 all, the pipeline is off the site as it's bringing
15 natural gas to the site. And the other would be
16 aqueous ammonia.

17 Q Please explain the potential
18 consequences of natural gas as it pertains to this
19 project.

20 A Well, natural gas in the pipeline does
21 have a potential for -- if there's pipeline
22 failure, for that natural gas to leak out. So I
23 examined the potential for that failure, and came
24 up with a -- not only the fact that existing LORS
25 would more than adequately protect against such a

1 failure, but even in the event of a failure I
2 proposed hazardous -- I'm sorry, proposed
3 Conditions of Certification Number 6, 7, and 9, to
4 even further mitigate any potential for offsite
5 consequence.

6 Q Could you please explain your analysis
7 in the consequences of using and handling aqueous
8 ammonia?

9 A I reviewed, once again, the proposed
10 mitigation measures by the Applicant, and felt
11 that even though those were adequate I wanted to
12 go one step further, and proposed several
13 Conditions of Certification, Numbers 3, 4, 5, 8,
14 10, and 11, which would reduce -- I'm sorry, which
15 would reduce the risks to insignificance.

16 Q Did you evaluate the proposed
17 transportation route for aqueous ammonia, the
18 route that's been described tonight?

19 A Yes, indeed. And I've also looked at
20 other routes, as well.

21 Q And what were your conclusions in
22 regards to public safety, using this route for
23 transportation of hazardous materials?

24 A Well, Mr. Tyler and I both jointly
25 prepared the transportation risk analysis, and we

1 found that the risk of significant impact, a
2 fatality, would be insignificant.

3 Q Do your proposed Conditions of
4 Certification and existing laws reduce chances of
5 accidental death to a minimum?

6 A Yes.

7 Q Please describe the existing laws, and
8 maybe you don't need to go into detail, but just
9 generally. And any -- any conditions that go
10 beyond those laws.

11 A I believe you're referring to, once
12 again, the transportation risk?

13 Q Yes.

14 A In that case. I reviewed the existing
15 federal and state regulations regarding the
16 transport of hazardous materials. There are
17 extensive Department of Transportation regulations
18 regarding not only the trucks, but training of
19 drivers and placarding, and I can quote you the
20 subparts of -- of the Code of Federal Register, if
21 you'd like -- Code of Federal Regulations, rather,
22 if you like.

23 There are also state requirements. The
24 Department of Motor Vehicles has requirements on
25 hazardous materials transportation on the state's

1 highways. The California Highway Patrol enforces
2 those.

3 And so that is one reason why Staff has
4 consistently, in transportation analysis, looked
5 only at that segment of hazardous materials
6 transport from the interstate highways, or the
7 main divided highway, to the project location, as
8 opposed to going over the whole route. Because we
9 feel that there are more than adequate standards
10 and safeguards in existing laws.

11 Q Does the project, with the proposed
12 Conditions of Certification, pose a significant
13 adverse impact?

14 A No.

15 Q Does it comply with all LORS?

16 A Yes.

17 Q Did you review CVRP's testimony?

18 A Yes.

19 Q On page 10, Mr. Radis states that
20 Staff's Transportation Analysis underestimates
21 risks of significant releases, and lists reasons
22 why. Do you agree with that statement?

23 A No.

24 Q And could you, in a sentence, explain
25 why?

1 A Certainly. Maybe two or three
2 sentences.

3 Q Thank you.

4 A Basically, all risk assessments are not
5 giving estimates of most likelihood. In other
6 words, this -- the results of a risk assessment do
7 not state what the real risks are. What risk
8 analysis does is gives you an upper bound of that
9 risk. And you put in certain assumptions that are
10 conservative in nature so that you know that
11 you're overstating the risk. So the true risk is
12 somewhere between zero risk and whatever number
13 you come out on your risk assessment.

14 Now, one -- one of the input variables
15 that Mr. Tyler and I used in our risk assessment
16 of transportation risks, involved the actual data
17 from several sources in the scientific literature
18 that indicate the potential for a release in a
19 hazardous materials vehicle accident.

20 Mr. Radis' estimate took total truck
21 volume at various segments along the route from
22 the Caltrans data. Now, I could've used the
23 Caltrans data, except the Caltrans data does not
24 break down what is a hazardous materials transport
25 truck and what's a truck that perhaps your Uncle

1 Joe rented and went and got some debris from your
2 back yard, and is transporting it to the dump and
3 gets in an accident at that intersection, or that
4 segment. So the Caltrans data doesn't do that.

5 Second of all, even in my data, which,
6 again, I had about four or five references from
7 reputable scientific journals, including "Journal
8 of Risk Analysis" and other scientific journals,
9 and these are supported by Department of
10 Transportation statistics, as well. Even my data
11 overestimates the risk of a transportation
12 accident of a hazardous materials vehicle.

13 And the reason for that is it includes
14 all hazardous material truck traffic, including
15 gasoline trucks. Mr. Radis' data includes
16 gasoline delivery vehicles as well. In fact, he
17 admits that in -- in his analysis.

18 Now, the risk of upset of a -- and
19 release with a gasoline truck is considerably
20 greater owing to the -- just the inherent nature
21 of delivery of gasoline to local neighborhood gas
22 stations, which are, by definition, at busy
23 intersections and in crowded neighborhoods, and
24 sometimes very narrow streets. So when you use
25 that database, you are overestimating by a

1 considerable number of -- of incidences.

2 So even my analysis overestimated, and
3 yet I still came up with a number considerably
4 lower, as far as the risk goes, than Mr. Radis.
5 Probably one of the most important reasons is that
6 the -- the Intervenor's expert misconstrued what
7 the level of concern, the -- of aqueous ammonia
8 vapor in the air would be under a transportation
9 risk analysis. They did, indeed, look at three
10 levels, 75 parts per million, 200 parts per
11 million, and 1,000 parts per million. But in
12 their narrative preceding the two appendices that
13 they offered into evidence, they refer to a risk
14 of one in a thousand at the 75 part per million
15 level.

16 Staff does not use a level of 75 parts
17 per million as a -- as an indicator of significant
18 risk in this type of transportation accident, or
19 in any type of risk assessment where we're looking
20 at the frequency, or the probability of the actual
21 release, plus the population exposure. Seventy-
22 five parts per million of ammonia is going to be a
23 little bit irritating to people, but it would not
24 at all permanently injure anybody, it would not at
25 all temporarily injure anybody, and it would never

1 stop anybody from getting the heck out of the way.

2 A more appropriate level would be a
3 thousand parts per million, and Mr. Radis did
4 indeed include that, and when you look at his
5 analysis you -- at the thousand part per million
6 level, you find that his overestimation is not
7 significantly overestimated, like the -- the level
8 of his result at 75 parts per million.

9 He -- the accompanying letter to
10 Appendix A and B did not list what that number
11 would be. In other words, at 75 parts per million
12 they were stating that the risk was one in a
13 thousand. And, of course, we came up with
14 something like maybe about two in a million.

15 I don't know what -- what the
16 computation is. It's unclear from Mr. Radis'
17 statements, but for one -- for a thousand parts
18 per million, it looks to me as -- as if it might
19 be something like one in a million. So at that
20 particular level, we're probably not that far
21 away.

22 I want to emphasize also that his method
23 and my method are actually very consistent. We
24 just -- I cut a couple of equations out by going
25 to the actual hazardous material truck release

1 accident data. He -- he went two steps backward
2 and used different data sets to generate that
3 number. But his -- his procedure is one that is
4 used by the Department of Transportation,
5 recommended by the Department of Transportation.
6 I could go into a couple of other reasons why
7 there -- there is some -- some problem with that
8 approach. But generally, it's -- it's an okay
9 approach, and we would come up with a similar
10 number if we used the end point, the same end
11 point.

12 We were using a lethality end point on
13 the transportation risk analysis. Now,
14 interestingly enough, the Department of
15 Transportation actually has numbers and data on
16 what the actual risks have been in the United
17 States as a result of these types of hazardous
18 materials transportation upsets. And that is --
19 is kind of the real life proof of the pudding as
20 to whether or not my risk analysis and Mr. Radis'
21 risk analysis overstate the risks. And, indeed,
22 they do, because obviously if -- if both of ours
23 were accurate we'd be seeing more -- more deaths
24 due to hazardous materials upset than we really
25 do.

1 The United States Department of
2 Transportation most recent data lists accidental
3 deaths in the United States from 1994 to 1998, due
4 to hazardous materials transportation, as about
5 one in six million. One in -- that's the general
6 population risk per year. And that -- that's a
7 much lower risk than what even I had calculated.
8 And interestingly enough, this figure really
9 should be a little bit lower, but the Department
10 of Transportation included in those figures the
11 deaths due to the Value-Jet crash into the Florida
12 Everglades, which technically wasn't really a
13 hazardous materials accident, transportation
14 accident. Those were spent oxygen canisters.

15 PRESIDING MEMBER LAURIE: There's been
16 an adequate narrative response to whatever
17 question was asked 15 minutes ago.

18 Thank you, sir.

19 BY MS. WILLIS:

20 Q Did you review Mr. Radis' failure
21 analysis for onsite components of the ammonia
22 handling system and CVRP's Appendix B?

23 A Yes, I did.

24 Q And did you agree with that analysis?

25 A No, it was very difficult to determine

1 what assumptions went into his analysis, but it
2 didn't appear to me that he used the data response
3 of September 20th from the Applicant in their --
4 and the Applicant's description of what the
5 containment facility really would be.

6 Q Thank you. You've provided some minor
7 changes in your Conditions of -- proposed
8 Conditions of Certification. Can you briefly
9 explain the change in HAZ-2? The sentence reads,
10 the project owner shall include methods to address
11 the inadvertent mixing of incompatible materials
12 and all recommendations of Santa Clara County and
13 the CPM in the final document.

14 A Yeah. I believe that the change is just
15 to the words "methods to address the inadvertent
16 mixing of incompatible materials" being added to
17 the -- to HAZ-2.

18 This was at the suggestion of the
19 Intervenor, and it's really merely one of
20 clarification. That sort of -- of description and
21 methods should be included in a risk management
22 plan and, indeed, the business plan. But I didn't
23 see that there was any harm, and certainly not
24 onerous to put this in. It's an important
25 concept, and I think it's -- it clarifies the

1 issue. And it was requested by the Intervenors.

2 Q And could you address the change you're
3 proposing in HAZ-4.

4 A Certainly. HAZ-4, and if I may, to
5 speed things up, HAZ-5, we added once again
6 clarification that these -- what we are request --
7 what we are requiring in these proposed
8 Conditions of Certification is that the Applicant
9 meet a -- a performance standard rather than a
10 specification standard. We don't want to tell
11 them how exactly to build their aqueous ammonia
12 containment facility, nor do we want to tell them
13 exactly how to build the transfer facility where
14 the aqueous ammonia delivery truck comes up and
15 hooks up to the tank.

16 We're giving them a performance standard
17 and saying however you do it, you have to
18 demonstrate to us, through the appropriate EPA
19 approved modeling, that when there is a spill it's
20 not going to be anything greater than 75 parts per
21 million at the fence line. Wherever that fence
22 line may be.

23 Q And I think the final change was in HAZ-
24 11, and it specifies the tanker trucks.

25 A Yes. Originally the only description of

1 the tanker truck in HAZ-11, referred to as the
2 data response dated July 19th, 2000. I thought it
3 was probably more appropriate to list specifically
4 that we're referring to the DOTMMC307 tanker
5 truck, and that, of course, was the tanker truck
6 described in that data response.

7 Q Thank you. Does that conclude your
8 testimony?

9 A Yes, it does.

10 MS. WILLIS: Okay. At this time we'd
11 like to move in the sections Traffic and
12 Transportation and Hazardous Materials Management
13 of the FSA into the record as Exhibit 7.

14 HEARING OFFICER VALKOSKY: Okay. Does
15 -- I take that also includes the -- the new
16 conditions as a replacement for the existing
17 conditions, as well as the additional resume?

18 MS. WILLIS: And declaration. Yes, it
19 does.

20 HEARING OFFICER VALKOSKY: Is there
21 objection?

22 Seeing none, those documents are
23 admitted.

24 ///

25 ///

1 (Thereupon the Traffic and
2 Transportation and Hazardous
3 Materials Management sections
4 of Exhibit 7 were received into
5 evidence.)

6 MS. WILLIS: And these witnesses are
7 available for cross examination.

8 HEARING OFFICER VALKOSKY: Three quick
9 points of clarification, gentlemen.

10 First, regarding Traffic and
11 Transportation, page 263 of the Final Staff
12 Assessment. Second paragraph under Cumulative
13 Impacts. I'd like to know your opinion as to the
14 correctness of the third sentence, starting with,
15 it is unlikely that the longer term projects.
16 Have you got that sentence?

17 MS. GRUENEICH: Excuse me. Mr.
18 Valkosky, could you repeat again what page you're
19 on?

20 HEARING OFFICER VALKOSKY: In mine it is
21 page 263 of the Final Staff Assessment, Exhibit 7.
22 The heading on the page is Cumulative Impacts,
23 which appears four lines down. Okay. The second
24 paragraph, the sentence, the third sentence in the
25 second paragraph, beginning with, it is unlikely.

1 Are you there? Okay. Could you tell me
2 if that sentence is still correct?

3 MR. BROWN: I'm not sure that it is
4 correct, although it doesn't change the
5 conclusion. From what I've heard today, it sounds
6 like the -- the Coyote Valley Research Park may be
7 on a faster track than I originally was aware of,
8 but it would not change the conclusion.

9 HEARING OFFICER VALKOSKY: Okay, it
10 would not -- okay, that -- it would not change the
11 conclusion in your analysis or require
12 supplemental analysis. Is that your testimony?

13 MR. BROWN: Correct. Yes.

14 HEARING OFFICER VALKOSKY: Thank you.

15 Okay. Second, Mr. Tyler, I believe this
16 is directed to you, at least it -- that was the
17 prior indication, you're Project Manager. It
18 actually concerns a Worker and Safety condition
19 appearing on page 130 of the Final Staff
20 Assessment. Do you have that with you?

21 Okay. And specifically, I'm looking for
22 an explanation of Condition of Certification
23 WORKER SAFETY-3. Could you explain to me the
24 meaning of the last sentence. The sentence reads,
25 within 60 days the CPM, in consultation with the

1 parties, will propose an interim fee schedule for
2 payment by the project owners. This concerns
3 proportionate funding of an additional fire
4 station.

5 What concern -- what concerns me is the
6 phrase, "will propose". I just don't know how
7 this will work as a condition.

8 MR. TYLER: Our intent here was to allow
9 the Applicant and the fire department to work out
10 an agreement between them. There was some
11 uncertainty as to exactly what that should be, so
12 we've put this condition in there to allow that to
13 happen.

14 We did envision that there might be some
15 stalemate or some reason that they could not reach
16 an acceptable agreement, and to ensure that we
17 have ultimate closure on it, if that actually in
18 fact occurs, then Staff would look at all the
19 information and discuss with both parties what
20 they're proposing, and then propose a -- a actual
21 agreement.

22 HEARING OFFICER VALKOSKY: Okay. Would
23 that Staff proposal be binding upon the parties,
24 or would it just be that, a place -- a starting
25 place for further negotiation?

1 PRESIDING MEMBER LAURIE: Is it your
2 intent that it be binding, subject to appeal to
3 the Commission?

4 MR. TYLER: Yes.

5 HEARING OFFICER VALKOSKY: Okay. Thank
6 you.

7 Next, following the discussion on behalf
8 of the city earlier, concerning the -- the
9 involvement of various local agencies in the -- in
10 the review of the reports required under the Haz
11 Mat conditions, I'm wondering if you could provide
12 some further explanation as to the role of those
13 agencies, if any, and which role they would play
14 in reviewing the -- the various plans.

15 DR. GREENBERG: I'd be happy to.

16 First of all, the CUPA, that's the
17 Certified Unified Program Authority, is the County
18 of Santa Clara. Now, there are various federal
19 and state regulations on various hazardous
20 materials management plans. The risk management
21 plan which comes down from Section 112R of the
22 Clean Air Act, is the federal requirement. And
23 the California ARP, Accidental Release Prevention
24 program, adopted those regulations and delegated
25 that authority to various counties to review.

1 So when it comes to the risk management
2 plan, the county is the CUPA. They will review
3 it. The California Energy Commission will review
4 it. And both will have to approve it. US EPA
5 gets it, also.

6 The -- the City of San Jose is a
7 participating agency. Now, the business plan,
8 which is required by Chapter 6.95 of the Health
9 and Safety Code of the State of California, or, if
10 you want to go to Title 22, Division 4.5 of the
11 California Code of Regulations, is also required.
12 And in that case, once again, the county is the
13 CUPA for the business plan, but the City of San
14 Jose will do the enforcement of that.

15 Now, the business plan is not only
16 required, of course, by state law, but it's also
17 required by local ordinance. And again, I can go
18 into the specifics of the local ordinance. But in
19 conversations with the head of the Hazardous
20 Materials Permitting Division in the City of San
21 Jose, he informs me, and I -- I concur with his
22 analysis because I've looked at the -- the laws
23 and the ordinances, there is nothing additional in
24 the City of San Jose ordinances above and beyond,
25 or special, different, anything different than

1 what the state law requires.

2 So what you have here, and sometimes it
3 gets a little confusing, is that the county, and,
4 of course, the California Energy Commission, will
5 review the RMP and the Hazardous Materials Plan.
6 The county will do enforcement of the RMP, as
7 would the CEC, but the enforcement of the
8 Hazardous Materials Business Plan, which also
9 includes all sorts of -- of plans, it's -- it's a
10 compilation of plans -- and if you like I could
11 read out all the plans here that -- all right, we
12 won't do that. But the enforcement of that
13 particular plan does go to the City of San Jose
14 Fire Department.

15 HEARING OFFICER VALKOSKY: Thank you.

16 Last question. Are you familiar with
17 the proposed Conditions of Certification from
18 CVRP?

19 DR. GREENBERG: Yes, I am.

20 HEARING OFFICER VALKOSKY: Okay. Do you
21 have an opinion as to the advisability of the
22 Commission adopting or rejecting any of those
23 changes?

24 DR. GREENBERG: Yes, I do.

25 HEARING OFFICER VALKOSKY: Could you

1 provide us that, please.

2 DR. GREENBERG: Yes. First of all, the
3 changes that I had proposed were consistent with
4 some, but not all, of the proposed changes by
5 CVRP. Now, there are others that I -- I don't
6 feel are necessary, and I can go over them one by
7 one and give you reasons.

8 HEARING OFFICER VALKOSKY: If you could
9 do that briefly, I would appreciate it.

10 DR. GREENBERG: Okay. If we look at
11 HAZ-1, that's something that we agreed with. We
12 added the word "strength" to HAZ-1. We did not --
13 I did not agree to make a reference to their
14 testimony. I didn't feel that that was necessary
15 to have in there, in their testimony.

16 On HAZ-2, I did not agree to include an
17 emergency response plan because that is already
18 required as part of the business plan. So it
19 would be duplicative.

20 However, I did agree to put in the
21 inadvertent mixing statement that CVRP wanted, and
22 that's in the middle there of HAZ-2, in the
23 underlined portion, because I felt that that was
24 important, and we -- and Mr. Tyler and I, in our
25 testimony in the FSA, did indeed highlight that

1 issue of inadvertent mixing.

2 When it comes to the last underlined
3 section of HAZ-2, that the San Jose Fire
4 Department and the City of San Jose make comments
5 and recommendations, once again, the -- the
6 procedures are for the CUPA to do this, as opposed
7 to adding on other governmental agencies, and I
8 didn't feel that that was necessary at this point
9 to do that.

10 And so what you have in HAZ-2 is that
11 the -- the CEC and Santa Clara County would be
12 reviewing it. Present law doesn't require or
13 allow for the City of San Jose to be reviewing it.
14 Even though they'll be enforcing it. Certain
15 parts of this.

16 And HAZ-3, I did not agree. First of
17 all, I am not that familiar with the California
18 Fertilizer Program on Driving Training. But in
19 any event, I believe that the existing DOT
20 regulations for training, that's 172 subpart H,
21 are very stringent for hazardous material
22 deliveries, and also the existing California DMV
23 with California Highway Patrol enforcement is --
24 is more than adequate.

25 Developing and implementing a vehicle

1 inspection and maintenance program. That's
2 something, again, that the hazardous materials
3 transporter have to do. Existing law already
4 requires them to do that. I don't know that it
5 would add anything to have the Applicant telling
6 them they have to do that.

7 As far as limiting ammonia deliveries to
8 the site to daytime, weekend, holidays. Quite
9 frankly, I would defer to the Committee on this.
10 I do not oppose it. I don't think that it is
11 necessary, but I would not oppose it. If you felt
12 that that was something to add an additional level
13 of comfort, and you've heard testimony from the
14 Applicant that that might result in some facility
15 design change, where they'd have to increase the
16 volume of storage of aqueous ammonia to go a whole
17 week, I think that should be taken into account.
18 But I -- I would not oppose this, but I don't
19 recommend it, either.

20 And then, finally, develop and
21 implement a transportation emergency response
22 plan. I -- I wasn't clear from the Applicant as
23 to whether or not they agreed or disagreed with
24 it. They were talking rather fast at that time.
25 And again, I would defer to the -- to the

1 Commission, or the Committee. I would not oppose
2 something like that. I -- I am not recommending
3 it, but I would not oppose that.

4 Once again, going down to all plans and
5 policies approved by Santa Clara County and
6 implemented as part of -- we already have a good
7 verification scheme as written, and including all
8 these other layers of -- of governmental review
9 and evaluation I don't believe add anything to the
10 already mitigated and safe methods that are being
11 proposed by the Applicant.

12 Under HAZ-4, I don't believe it's
13 necessary to -- to have local ordinances and
14 regulations amending the ASME pressure vessel
15 code, or ANSI codes, or API, American Petroleum
16 Institute codes. Those are updated very
17 frequently, and those are the agencies that I
18 think you want to rely on, as opposed to the local
19 ordinances, which, you know, there -- there is a
20 question as to their level of expertise in dealing
21 with pressure vessels in this regard.

22 We've pretty much addressed the issue of
23 75 parts per million on the property line. This,
24 then, once again goes to a performance standard
25 versus a specification standard. If I tell them

1 to put in a scrubber, that's a specification
2 standard. If I tell them hey, design it your way,
3 but you've got to meet 75 parts per million at the
4 fence line, that's a performance standard, and
5 that's what I'm concerned about.

6 If we go on to HAZ-5, once again -- by
7 the way, there is a typo there. It says less than
8 77. I'm sure CVRP didn't want to allow two more
9 parts per million at the fence line, so that
10 should be 75 parts per million.

11 The same --

12 MS. GRUENEICH: You caught our errata
13 already.

14 DR. GREENBERG: I -- my response is the
15 same. They meet the 75, and we'll make sure they
16 meet the 75. That's the performance standard that
17 I'm interested in.

18 On HAZ-6, we agreed -- I agreed with
19 this. Detailed maintenance plan for the gas
20 pipeline. Quite frankly, it was unclear to me who
21 was actually going to own this one mile pipeline,
22 whether it would go to PG&E or owned by the
23 Applicant after they built it. If PG&E owned it,
24 they were going to have to do this maintenance
25 plan anyway by virtue of the November 2000

1 regulations from the Office of Pipeline Safety of
2 the Department of Transportation.

3 And so we put this in, make no question
4 about it, they're going to have to do this
5 maintenance plan now, regardless of who owns that
6 -- that segment.

7 Under HAZ-8 -- well, because I didn't
8 agree with HAZ-3, I wouldn't agree that the
9 project owner should direct all vendors to comply
10 with those policies and measures. And once again,
11 adding the City of San Jose and Santa Clara County
12 into the routes approved by the CPM, I didn't feel
13 added anything to the -- to the issues.

14 HAZ-11. I do not believe that that
15 would be appropriate. I would rather, however,
16 have Mr. Tyler tell you why the DOT 307 truck is
17 probably better suited for the transportation of
18 aqueous ammonia than the MC331 tanker, which is
19 used for anhydrous ammonia. And I'll let Mr.
20 Tyler handle that one in a moment.

21 HAZ-12, I just don't think that that's
22 necessary. We have demonstrated that the use of
23 the 30 percent aqueous ammonia would result in no
24 significant impacts to the public.

25 And HAZ-13, again, I don't think that

1 that's necessary, because it -- basically, Staff's
2 conditions go well beyond local regulatory
3 requirements. And -- and, in fact, if one said
4 that you were to build this facility strictly to
5 local regulatory requirements, or even state, or
6 even federal regulatory requirements, it would
7 almost be a step backwards.

8 Our Conditions of Certification are more
9 stringent than anything that the City of San Jose
10 has. And so while it's true they have to comply
11 with the City of San Jose hazardous materials
12 ordinances, et cetera, they are doing so by virtue
13 of complying with the federal and state and our
14 proposed Conditions of Certification. So I don't
15 -- I just don't think that this is necessary.

16 And with that, Mr. Tyler, if you'll
17 discuss HAZ-11.

18 MR. TYLER: First, I'd like to make one
19 brief clarification on the CUPA. The whole intent
20 and purpose of establishing a CUPA in this state
21 is to ensure that each local jurisdiction has one
22 authority that coordinates all efforts by all
23 other local agencies in dealing with this matter.
24 So once they establish a CUPA, if the city has --
25 the city will receive copies of the RMP and the

1 other plans. And they will be given an
2 opportunity to review those and give their
3 comments to Santa Clara County. The CUPA, in
4 other words, considers all input from all other
5 local jurisdictions that may want to comment.
6 That's the whole intent of the -- of establishing
7 the CUPA.

8 With regard to the -- to the differences
9 between the two trucks specified. One truck, the
10 truck that's being proposed by CVRP is designed
11 for anhydrous ammonia, which is a liquefied
12 gaseous form of ammonia that contains almost no
13 water. It has an internal pressure in the tank
14 typically of around 300 psi. So it's an ASME
15 pressure vessel.

16 I'm not at all sure -- I would assume
17 there'd be some reluctance on the part of shippers
18 to utilize that type of vehicle for both types of
19 transport. So in the -- in the absence of them
20 purchasing their own truck, it may be very
21 difficult for them to get anybody to utilize that
22 type of vehicle, because they wouldn't want to mix
23 those two materials.

24 The MC307 truck is a stainless steel
25 truck designed for caustic hauling. And that is

1 the truck that would normally be used for those
2 types of materials. So --

3 PRESIDING MEMBER LAURIE: Is there a
4 legally mandated -- is there a legally mandated
5 truck for this kind of material?

6 MR. TYLER: The 307 truck is the one
7 that's -- that's supposed to be used and is
8 recommended for that type of material.

9 PRESIDING MEMBER LAURIE: Thank you.

10 HEARING OFFICER VALKOSKY: Thank you,
11 gentlemen.

12 Mr. Harris, cross examination.

13 MR. HARRIS: Just a couple of quick
14 questions.

15 CROSS EXAMINATION

16 MR. HARRIS: There was discussion about
17 I think 20 percent ammonia and 28 percent ammonia.
18 Is it true that the 20 percent ammonia is more
19 costly to the -- for the Applicant?

20 MR. TYLER: I would assume so, because
21 it requires more deliveries of the material.
22 There's less effective material in a delivery.
23 The -- the actual ammonia in solution is what is
24 driven off to run the SCR system. So I would
25 assume yes, there would be more cost associated

1 with it.

2 MR. HARRIS: Okay. Because that's -- a
3 20 percent, it's basically 20 percent ammonia and
4 80 percent water. Is that correct?

5 MR. TYLER: That's correct. By weight.

6 MR. HARRIS: So you'd be taking more
7 water, essentially, so.

8 MR. TYLER: That's correct.

9 MR. HARRIS: Okay. In light of the
10 opinion expressed that the project would propose
11 mitigation and Conditions of Certification,
12 doesn't that make significant impacts. Is it your
13 opinion that the minimal risk reduction from a
14 change to 20 percent ammonia does not justify the
15 increased costs?

16 MS. WILLIS: I'm going to object. I'm
17 not sure that's the standard use, but --

18 MR. HARRIS: Let me rephrase --

19 MS. WILLIS: -- I don't know -- I don't
20 know where the testimony as to cost is --

21 HEARING OFFICER VALKOSKY: Please
22 rephrase the question.

23 MR. HARRIS: Let me rephrase it. In
24 light of the conditions and the proposed
25 mitigation, is a switch to 20 percent justified,

1 in your -- in your view?

2 MR. TYLER: We are not recommending that
3 -- that condition. We believe that the proposed
4 material is -- is safe enough.

5 MR. HARRIS: Okay. Thank you.

6 One more question for the Haz Mat folks.
7 Typically, the high tech industry in the Silicon
8 Valley uses hazardous materials and acutely
9 hazardous materials. Is that correct?

10 MR. TYLER: Would you repeat that
11 quickly?

12 MR. HARRIS: Does the high tech industry
13 in the Silicon Valley typically use hazardous
14 materials and acutely hazardous materials?

15 MR. TYLER: Yes.

16 MR. HARRIS: So those materials will be
17 found in the areas where manufacturing is
18 occurring in the Silicon Valley already. Is that
19 correct?

20 MR. TYLER: Yes.

21 MR. HARRIS: Thank you.

22 Moving to the Transportation expert.
23 Could I turn your attention to Transportation 8.

24 MR. BROWN: Yes.

25 MR. HARRIS: There was some discussion

1 earlier about the city and their obligations and
2 interests related to a second access road. First,
3 can you confirm that a second access road is not
4 required by the applicable LORS?

5 MR. BROWN: To be clear, I can't give
6 you a yes or no. The -- the city does not have a
7 written policy in the general plan or other
8 documents indicating the need for a second point
9 of access. They have a -- a practice, if you
10 will, of requesting and requiring a second point
11 of access for developments such as this.

12 MR. HARRIS: Okay. Thank you.

13 Looking now at Transportation-8, is it
14 your intent there to give the city the ability to
15 obtain the rights-of-way and other access needed
16 for a second access road?

17 MR. BROWN: It's not -- not to give the
18 city the ability, no.

19 MR. HARRIS: Looking at specifically the
20 language that -- of the protocol.

21 MR. BROWN: Yes. You asked if -- to
22 give the city the ability. The city has the
23 ability to attain that. We're not -- we're not
24 granting anything in that regard.

25 MR. HARRIS: Right. You're not granting

1 authority. But is your intent there to give the
2 city the authority to control their own destiny
3 with respect to that road?

4 MR. BROWN: Stated more -- maybe stated
5 differently and more clearly, it would be that --
6 that the Applicant can't -- can't obtain --
7 legally can't -- doesn't have eminent domain
8 powers to obtain right-of-way outside their --
9 their facility, but the City of San Jose does.

10 MR. HARRIS: Okay. Thank you.

11 That's all I have. Thank you.

12 HEARING OFFICER VALKOSKY: Thank you.

13 For the remaining cross examination I
14 intend to go to the City of San Jose, CVRP, Mr.
15 Williams, Santa Teresa, Mr. Ajlouny, Mr. Scholz,
16 and Mr. Garbett. I'm -- did I leave you out, Mr.
17 Williams? I want you to follow CVRP.

18 MR. WILLIAMS: No.

19 HEARING OFFICER VALKOSKY: Okay. I just
20 wasn't sure.

21 MR. WILLIAMS: Thank you.

22 HEARING OFFICER VALKOSKY: Okay. Ms.
23 Dent.

24 CROSS EXAMINATION

25 MS. DENT: Thank you. To keep the

1 continuity up here I'll go directly to TRANS-8.

2 I'm Molli Dent, with the City of San Jose.

3 Directing your attention to TRANS-8, and
4 specifically the protocol language. The -- is it
5 your understanding that the city's standard
6 requirement is then for the developer of projects
7 such as this to provide a second point of access
8 into a facility?

9 MR. BROWN: Yes.

10 MS. DENT: And the -- is it your
11 understanding that the city requires the developer
12 to provide that -- of course, developers don't
13 always have the power of eminent domain -- but the
14 developer is required to provide all of the
15 funding and all of the cost associated with that?

16 MR. BROWN: I'm not aware of the city's
17 policy in that regard.

18 MS. DENT: So how is it to be provided
19 by the Applicant, then, if the city is supposed to
20 fund it?

21 MS. WILLIS: I'm going to object. I
22 believe he said he's not familiar with that.

23 MS. DENT: He told me -- his answer to
24 my first question was that his -- it was his
25 understanding that it was the city's policy,

1 practice, to require the developer to provide the
2 access. He said yes.

3 So how does the developer provide the
4 access to the city if the developer doesn't
5 provide the funding for it? How does the
6 developer make sure the access is provided?

7 PRESIDING MEMBER LAURIE: Is it the
8 intent of the answer to that consistently with
9 city policy and practice?

10 MS. DENT: That --

11 PRESIDING MEMBER LAURIE: That's a --

12 MS. DENT: That's my question, whether
13 or not the -- whether or not the -- the intent of
14 this protocol, is it to be consistent with what
15 would normally be done with a private development
16 project by the City of San Jose in reviewing such.

17 PRESIDING MEMBER LAURIE: Is that the
18 intent of the testimony? Or if you don't know,
19 answer you don't know.

20 MR. BROWN: I can't give you a simple
21 answer. It would be more complex.

22 MS. DENT: Well, let me ask it a
23 different way. Is it your understanding that the
24 city would not permit operation of the facility
25 before the second point of access is provided?

1 MR. BROWN: That's the city's -- I mean,
2 it's up to the city. I don't have any knowledge
3 of the city's desire.

4 MS. DENT: So let's -- let's go back to
5 the assumption that I used with the other witness.
6 I understand that there -- you don't think there's
7 a written policy on this. I understand that. But
8 you acknowledge that it is a practice.

9 MR. BROWN: Yes.

10 MS. DENT: And that it is a standard
11 that the city uses for private development.

12 MR. BROWN: I don't know if standard's
13 the right word, but a practice I think is
14 appropriate.

15 MS. DENT: And that the standard is for
16 a second point of access to be provided.

17 MR. BROWN: Provided, but not
18 necessarily by the Applicant. That the -- the --
19 approach, if you will, is that there be two --
20 that there be two points of access to projects.

21 MS. DENT: And following up on that,
22 when the city has a requirement such as this for a
23 project, is it your understanding that the project
24 would not normally begin operation until that
25 requirement were met?

1 MR. BROWN: I -- I don't know that to be
2 the case.

3 MS. DENT: Then it is your testimony that
4 even though the project doesn't meet the city's --
5 I think we decided requirement was an okay word,
6 we weren't sure about standard -- even though the
7 project doesn't meet the city's requirement
8 because we're not sure that the second point of
9 access will be provided before construction,
10 before operation, even though that's not there,
11 the project is still LORS compliant.

12 MR. BROWN: The way the condition is
13 written, the City of -- City of San Jose, if -- if
14 it -- well, let me back up.

15 If others, which include the City of San
16 Jose, are able to provide the -- the connection up
17 to the property line, the project is required to
18 provide a second point of access.

19 MS. DENT: So if that doesn't happen,
20 just because that --

21 MR. BROWN: If -- if the city does not
22 provide that -- the ability to connect, then this
23 condition says that the Applicant can proceed with
24 a single point of access.

25 MS. DENT: With a single. And that is

1 inconsistent with the city's --

2 MR. BROWN: Practice.

3 MS. DENT: -- practice. And that second
4 -- and that single point of access, let's say it
5 again, is across the railroad tracks.

6 MR. BROWN: Correct.

7 MS. DENT: A major railroad track, the
8 Union Pacific Railroad track running along 101.
9 Am I correct?

10 MR. BROWN: Well, I don't know about the
11 term major, but it's a railroad track. Yes.

12 MS. DENT: All right.

13 MR. BROWN: They're all the same width.

14 MS. DENT: A lot of -- a lot of trains
15 on that track, let's put it that way.

16 (Laughter.)

17 MS. DENT: Okay. I'm going to switch
18 for a moment to the fire station issue. I've got
19 a real -- focus here.

20 On the -- I realize this is a Worker
21 Health and Safety Condition of Certification. I
22 believe it's Worker Safety-3. And there doesn't
23 seem to be any indication of the obligation on the
24 part of the Applicant to mitigate for Haz Mat
25 impacts to the fire department.

1 I believe that it is understood that the
2 city's Hazardous Incident Team is more than 30
3 minutes away from this location. Do you all
4 understand that to be the case?

5 MR. TYLER: That's the testimony, yes,
6 that it's 30 minutes away.

7 MS. DENT: And if I were to tell you
8 that the Hazardous Incident Team were located in
9 North San Jose, three or four miles north of here,
10 would that comport with your understanding and
11 what you were told by the fire department?

12 MR. TYLER: Yes, I guess it would.

13 MS. DENT: So that's a pretty -- pretty
14 long distance, and a lot of travel time from
15 Metcalf Energy Center. So is there some reason
16 that the requirement to provide fire service for
17 worker health and safety and fire protection
18 doesn't include provision for hazardous incident
19 response capability?

20 MR. TYLER: I -- I believe it does.
21 That's the intent of this -- the intent of this
22 condition is to mitigate significant impacts on
23 the fire protection services, which Haz Mat is
24 part of.

25 MS. DENT: So you would not have an

1 objection, then, to adding worker safety and fire
2 protection and hazardous materials response?

3 MR. TYLER: No. The one thing I would
4 point out is that the normal practices that we've
5 followed in making these agreements is that if
6 there's a necessity for a Haz Mat team or a fire
7 station to be provided, we like to see that in
8 place before there's actual Haz Mat deliveries to
9 the facility, or -- or that that be funded so that
10 it's at relatively the same time.

11 Then we generally ensure that the
12 Applicant is reimbursed through tax revenues that
13 they pay subsequent then, for those -- for those
14 sorts of payments that they made in advance. That
15 is normally the way that -- that these sort of
16 agreements have been structured.

17 MS. DENT: So -- and I was going to get
18 to that in a moment. I was going to ask about the
19 agreement and the amount of timing and fees. Are
20 these -- are these three party agreements between
21 the state, Calpine, and the city? Or are they
22 simply agreements between the city and the
23 Applicant?

24 MR. TYLER: It's our hope that they are
25 an agreement between the Applicant and the fire

1 department, whether that's the city or whoever's
2 responsible for providing the services. The
3 intent of this condition is that the Applicant and
4 the fire department, whoever has authority for
5 maintaining that service, work together and come
6 up with agreement to provide the services in a
7 timely manner so that the public's protected.

8 MS. DENT: And I guess I was a little
9 confused about the tax issue. I don't see any
10 mention of taxes in here.

11 MR. TYLER: In -- in the testimony,
12 there is a discussion about the assessment
13 district, and -- to be quite frank, there's --
14 there was quite a bit of confusion on our part as
15 to exactly how this was all going to work. So our
16 intent was to leave that -- leave that
17 uncertainty, not try to -- to resolve all the
18 uncertainties, but to structure a condition that
19 allowed the parties to reach an acceptable
20 agreement, and that we would become involved if
21 that agreement cannot be reached.

22 MS. DENT: So that would be, then,
23 encompassed in your language that -- I mean, if
24 the condition were simply to read that the project
25 owner shall provide funding to cover project

1 specific impacts associated with worker safety,
2 fire protection and hazardous incident, that's
3 really what -- that's the standard that you're
4 asking to be met, that it be -- that their funding
5 cover their project specific impacts. Am I
6 reading that accurately?

7 MR. TYLER: That's correct. Either --
8 but the main intent here is to ensure that the
9 funding is provided in a timely manner to ensure
10 that the services are in place at the -- at the
11 time that the actual risks start occurring.

12 MS. DENT: I understand that, because
13 you also have interim funding if some agreement
14 can't be reached with the fire service.

15 MR. TYLER: Right. And so then we're
16 looking for that to be worked out, the payment and
17 the tax revenues, and so on, between the two
18 parties.

19 MS. DENT: And again, if this were not
20 worked out, the -- I believe the testimony earlier
21 was that the -- there would be a recourse to the
22 Commission.

23 MR. TYLER; That's correct.

24 MS. DENT: Okay.

25 MR. TYLER: And they would be the

1 ultimate arbitrator.

2 MS. DENT: All right. I think I have
3 just one more point of clarification.

4 If I were to tell you that the City of
5 San Jose and the County of Santa Clara have a
6 state approved agreement under which the City of
7 San Jose is the administering agency under the
8 county's CUPA for a number of the plans that are
9 referenced in your documents, under which the city
10 is actually the delegated jurisdiction to review
11 those plans, would you understand that that --
12 that is an arrangement that the state does permit
13 and allow.

14 DR. GREENBERG: I would certainly -- I
15 certainly agree with you that the state does allow
16 that. I would have to get confirmation from Mr.
17 Mike Murtiff, who is the City of San Jose
18 Hazardous Materials Permit Manager, who told me
19 that the city enforces the business plan, but that
20 the county was the CUPA. So if -- if there is
21 clarification on that --

22 MS. DENT: If you were the --

23 DR. GREENBERG: -- I would have no
24 objection at all to including the city.

25 MS. DENT: The -- the point is that if

1 -- if the authority exists under an agreement with
2 the county, there was not some intention to
3 preclude that agreement.

4 Thank you.

5 HEARING OFFICER VALKOSKY: Thank you,
6 Ms. Dent.

7 I'd just like to advise the parties of
8 the time that I have listed remaining. Ms.
9 Grueneich, I have you for a maximum of 15 minutes
10 cross. Mr. Williams, five to ten minutes. Mr.
11 Scholz, zero to ten minutes. Mr. Ajlouny, ten
12 minutes. Mr. Garbett, three questions not to
13 exceed five minutes.

14 Is there any major discrepancy with
15 that?

16 No. Thank you.

17 Proceed, Ms. Grueneich.

18 MS. GRUENEICH: Thank you.

19 CROSS EXAMINATION

20 MS. GRUENEICH: If I could turn my --
21 whoever is the appropriate witness on this, to
22 CVRP's testimony, which we have identified as
23 Exhibit 33. And specifically, the bottom of page
24 6.

25 And I'm looking at the paragraph that

1 begins at the bottom of page 6, the Metcalf Energy
2 Center would fall under the jurisdiction, and
3 continue through the top of the page. And to
4 summarize it, basically, I believe reiterates what
5 the attorney for the City of San Jose was
6 describing with regard to the specific
7 relationship in this particular jurisdiction
8 between the County of Santa Clara and the City of
9 San Jose, with regard to CUPA and administering
10 agency.

11 And my question is, did either of the
12 Staff witnesses on Hazardous Material, when you
13 had cause to review this testimony, confirm with
14 the City of San Jose what was their role, as far
15 as administrating agency?

16 DR. GREENBERG: Yes, I did.

17 MS. GRUENEICH: After you read this
18 testimony?

19 DR. GREENBERG: Yes.

20 MS. GRUENEICH: And in light of that,
21 what is your understanding with regard to the
22 statement that was just made that there has been a
23 delegation by the county to the City of San Jose
24 for review?

25 DR. GREENBERG: And my response would be

1 the same. It appears as if the appropriate person
2 in the City of San Jose was unaware of that, but
3 -- and I have no problem in further clarifying it.
4 And if it turns out that the previous questioner
5 is correct, then we will address that.

6 MS. GRUENEICH: And by addressing it, I
7 assume that we could hopefully reach some
8 agreement that within a condition of certification
9 there would be some acknowledged role for the City
10 of San Jose?

11 MR. TYLER: Whoever is the CUPA. There
12 is already a role for the City of --

13 MS. GRUENEICH: I understand that.

14 MR. TYLER: -- for the City of San Jose.
15 And that role is -- is basically defined within
16 those local agencies. If the CUPA believes that
17 -- that they want review by the City of San Jose
18 or if they're a party to that agreement and that's
19 the way it's normally done, then whoever comments
20 on that -- on the actual RMP, that would be
21 binding. The CUPA -- the CUPA simply coordinates
22 the efforts of all the agencies.

23 MS. GRUENEICH: Let me rephrase that.

24 Would Staff -- if, in fact, the case is here
25 within this County of Santa Clara, there has been

1 a delegation to the City of San Jose to have a
2 role as administrating agency, would Staff in fact
3 oppose including within the Condition of
4 Certification dealing with the Hazardous
5 Materials, a role for the City of San Jose that
6 would include review?

7 MR. TYLER: If the City of San Jose is
8 the administering agency, by law, then they have
9 the delegated authority to administer the federal
10 program. Our jurisdiction cannot preclude that.
11 There's -- if there's a federally delegated
12 program, that is -- that whoever administers that,
13 by law, is responsible for reviewing that program.
14 And that's the approval --

15 MS. GRUENEICH: Would you oppose --

16 MR. TYLER: -- that we would expect.

17 MS. GRUENEICH: Would you oppose
18 including within a condition of certification the
19 specific listing of the City of San Jose as a
20 reviewing agency? That's my question. It isn't
21 what's the law. It's very specific.

22 MS. WILLIS: I'm going to object, only
23 on the basis that -- that the information Ms. Dent
24 just gave us isn't actually evidence, or that it's
25 --

1 HEARING OFFICER VALKOSKY: Right.

2 Right, right. Ms. --

3 MS. WILLIS: -- and I think the
4 witnesses have answered that if -- if it, you know
5 --

6 HEARING OFFICER VALKOSKY: No. Ms. --
7 Ms. Willis, I don't think they've answered the
8 precise question. The precise question, as I
9 understand it, is, is if the City of San Jose is
10 the proper reviewing agency under the CUPA,
11 pursuant to whatever agreement is applicable,
12 would Staff object specifying the City of San Jose
13 in that regard. Is -- is that correct, Ms.
14 Grueneich?

15 MS. GRUENEICH: That's correct.

16 MR. TYLER: No, we would not object.
17 That would be perfectly appropriate.

18 HEARING OFFICER VALKOSKY: Thank you.

19 MS. GRUENEICH: Thank you.

20 Under the Traffic and Transportation,
21 there's a condition of certification, TRANS-3,
22 that states that the project owner shall ensure
23 that all federal and state regulations for the
24 transport of hazardous material are observed
25 during both construction and operation of the

1 facility.

2 Is there an objection -- let me step
3 back.

4 It is my understanding that we do not
5 have a similar condition of certification that
6 deals with the storage of hazardous material.
7 That, in other words, TRANS-3 is a specific
8 specification that federal and state regulations
9 for the transport are observed. But there is no
10 specific condition with regard to the storage. Am
11 I correct?

12 MR. TYLER: I guess I'm having a little
13 difficulty here. Transportation didn't propose
14 any conditions with regard to fixed facilities for
15 storage of hazardous materials.

16 MS. GRUENEICH: I -- I understand that.
17 I'm saying within the FSA, there is not a
18 comparable one that has to do with the storage.
19 In other words, if we step back, we can see
20 there's one for the transportation of hazardous
21 materials. And it's in the Transportation
22 section.

23 But I didn't find one anywhere in the
24 FSA that had to do with the storage. Am I
25 correct?

1 DR. GREENBERG: You're correct. Usually
2 we don't put in the redundancy that you have to --
3 as a condition of certification, you have to
4 comply with all federal and state regulations. We
5 usually put that in.

6 MS. GRUENEICH: Right. But there --
7 there is one for the transportation.

8 DR. GREENBERG: Right. But I didn't
9 write the transportation. And if I had, I
10 wouldn't have put that in.

11 MS. GRUENEICH: Okay.

12 (Laughter.)

13 MS. GRUENEICH: So I assume -- trying to
14 make this so we can move ahead. CVRP has, for
15 whatever reason, proposed an additional HAZ-13
16 that does talk about compliance with the storage
17 of hazardous materials. It is specifically
18 tailored to the City of San Jose and Santa Clara
19 County. Would there be an objection to the Staff
20 if similar to what we see in TRANS-3, there was a
21 condition of certification that talked about for
22 the storage of hazardous material, compliance with
23 applicable regulations, including any applicable
24 local regulations?

25 DR. GREENBERG: Yeah, I'll give the same

1 answer. It's -- it's not necessary. What you're
2 -- what you're saying is please comply with all
3 applicable LORS. And that's a given.

4 MS. GRUENEICH: There isn't --

5 DR. GREENBERG: We don't usually put
6 that in the condition of certification.

7 HEARING OFFICER VALKOSKY: Okay. Aside
8 from -- and let me try to get to this. Aside from
9 your view that it is not necessary, and aside from
10 a certain sense of order that you believe it's
11 duplicative, is there any harm in including such a
12 condition?

13 DR. GREENBERG: I don't believe that
14 there's any harm in including it. If the
15 Commission -- Committee so wishes, I wouldn't
16 object.

17 HEARING OFFICER VALKOSKY: Thank you.

18 MR. HARRIS: But just by way of
19 clarification, what is "it" we were talking about.
20 Was it the -- a general condition or the specific
21 language that CVRP has proposed?

22 MS. GRUENEICH: I'm looking at TRANS-3.
23 It states, the project owner shall ensure that all
24 federal and state regulations for the transport of
25 hazardous materials are observed during both

1 construction and operation of the facility.

2 Would Staff object to language that
3 would be, I suppose, in the Hazardous Materials
4 section, somewhat along the lines of the project
5 owner shall ensure that all -- and I'm not sure,
6 frankly, if there are federal regulations, I would
7 defer to Staff -- but state, and to the extent
8 they are applicable, local regulations for the
9 storage of hazardous materials are observed during
10 both construction and operation of the facility.
11 And then a similar verification.

12 DR. GREENBERG: As -- as you've written
13 it -- read it, rather, Staff would -- would not
14 object to that. Once again, we don't think it
15 would be necessary. I'd be interested, though, in
16 hearing what you would include in your
17 verification.

18 MR. HARRIS: Actually, I want to know,
19 were you suggesting exactly lifting that language
20 out, because you added local into the string. And
21 I want to know if that's -- was intentional, and
22 if that's significant.

23 MS. GRUENEICH: Well, looking --

24 PRESIDING MEMBER LAURIE: Well, wait a
25 minute. The CVRP is making a request that a

1 condition similar to the transportation be
2 imposed. Great. We -- we got on a roll thing,
3 and we don't need concurrence from Staff. So I
4 suggest that you move on.

5 MS. GRUENEICH: Move on. In fact, I may
6 be done, because --

7 HEARING OFFICER VALKOSKY: Thank you.

8 MS. GRUENEICH: -- because I'm sure I'm
9 --

10 (Inaudible asides.)

11 PRESIDING MEMBER LAURIE: Mr. Harris, we
12 understand what the request is.

13 MR. HARRIS: Actually, I wasn't sure
14 that we did, because she had added the word
15 "local".

16 PRESIDING MEMBER LAURIE: Okay. Well,
17 she can -- she can add it. The Committee can take
18 that into consideration.

19 MR. HARRIS: Okay. I just wanted to be
20 clear that it wasn't the exact condition as for 3.

21 MS. GRUENEICH: And I did add it
22 intentionally.

23 For the Staff, when you did your
24 analysis of hazardous materials, did you assume
25 the use of water spray with regard to ammonia in

1 the event of a release?

2 DR. GREENBERG: No.

3 MS. GRUENEICH: Is it your understanding
4 that the Applicant intends to use water spray?

5 DR. GREENBERG: Yes.

6 MS. GRUENEICH: Is that a mitigation
7 measure that you support use of?

8 DR. GREENBERG: Let's put it this way.

9 It was my understanding that this was not an
10 automatic water suppression spray, and therefore I
11 did not include it in the analysis.

12 MS. GRUENEICH: My -- my question is, I
13 understand you didn't include it in the analysis.
14 I was asking more in real life, is it a mitigation
15 -- and I don't even know if I should use the word
16 mitigation measure. Is it part of the system
17 design that you think is a good idea?

18 MR. TYLER: Water suppression systems --
19 ammonia is very soluble in water. A spray
20 suppression system will knock down concentrations
21 to some extent if there is a release. However, as
22 proposed, the facility would include vaults under
23 both the delivery area and the tank, and in our
24 opinion, the concentrations that would result from
25 releases off of such a covered area would be --

1 would result in insignificant downwind
2 concentrations.

3 The suppression spray suppression system
4 would further reduce those. However, there's a
5 lot of controversy as to how effective those would
6 be, and particularly at that kind of low
7 concentration. So we -- basically, it doesn't
8 hurt anything, and therefore if they want to do
9 it, it's fine with us. But we didn't include it
10 as -- as a basis for our final conclusions.

11 MS. GRUENEICH: Those are all the
12 questions I have.

13 HEARING OFFICER VALKOSKY: Thank you,
14 Ms. Grueneich.

15 Mr. Williams. Five to ten minutes only.

16 MR. WILLIAMS: Thank you, sir.

17

18 CROSS EXAMINATION

19 MR. WILLIAMS: Robert Williams.

20 First, let me thank Mr. Tyler or Mr.
21 Richins for their courtesy in forwarding me of
22 Davies and Lees. Thank you very much.

23 Let me direct your attention to page
24 155, where Davies and Lees is cited.

25 MR. HARRIS: Which document is this?

1 MR. WILLIAMS: Of the FSA, page 155.

2 MR. HARRIS: Oh, thank you. I'm sorry.

3 It was -- forgive me.

4 MR. WILLIAMS: My question is, why did
5 you rely upon foreign statistics? That is,
6 statistics from the United Kingdom, as the basis
7 for the accident risk estimates on page 155?

8 MR. TYLER: First off, I don't believe
9 we did. I think we used the --

10 DR. GREENBERG: Yes, we -- we used, if
11 you look at Davies and Lee, which nobody else has,
12 but in Table 25, we used the frequency in the
13 United States after the Harwood study. So we --
14 we weren't using Great Britain's frequency.

15 MR. WILLIAMS: Oh, forgive me. Is the
16 Harwood study cited here anywhere?

17 DR. GREENBERG: It's in Davies and Lee.
18 It's cited there.

19 MR. WILLIAMS: I see. So it's the
20 secondary cite to the U.S. Would it be your
21 testimony that if you have segment by segment
22 accident statistics, that that would be an
23 appropriate way of synthesizing the accident risk?

24 DR. GREENBERG: As -- as I stated
25 previously, I -- I don't disagree with the

1 algorithm, that is the mathematical approach, that
2 CVRP's expert used. My approach is -- is actually
3 quite similar to his, in that I just condensed a
4 couple of the steps. While he expanded some of
5 the steps. And then we used different accident
6 databases.

7 MR. WILLIAMS: Is it your testimony that
8 you used the California Accident Database?

9 DR. GREENBERG: No. As I explained, I
10 did not use the California Accident Database. In
11 fact, if one wants to use the California Accident
12 Database, one should use the one involving
13 hazardous materials deliveries, and not all
14 trucks, which that's what Caltrans uses, all
15 trucks.

16 MR. WILLIAMS: Is it possible that
17 because there is a limited number of hazardous
18 shipments, that better statistics would be
19 available from using a broader class of accidents?
20 That is, more trucks, not just those limited to
21 hazardous materials.

22 DR. GREENBERG: Actually, not. And the
23 Harwood study does criticize this particular
24 approach, because of the -- the using all accident
25 rates or all truck accident rates at particular

1 segments or intersections, the Harwood study warns
2 that you need to understand the limitations of
3 those data. In other words, how accurate, how
4 verified, how accurate they are, verification,
5 standard deviations of rates, et cetera.

6 Quite frankly, Mr. Williams, when you
7 look at the actual hazardous material transport
8 incident rates, aqueous ammonia trucks, these
9 tanker trucks, have a zero accident rate in the
10 State of California over the last ten years. So
11 even my risk assessment, assuming that there were
12 some spills, overestimated the actual real risks
13 as compiled by California Department of
14 Transportation, U.S. Department of Transportation,
15 the National Research -- I mean, I'm sorry, the
16 National Response Center, et cetera. I looked at
17 four or five different databases.

18 MR. WILLIAMS: Thank you. In view of
19 the limitations on time, I have to move on.

20 Is it possible that there is a trade-off
21 between concentration and number of trips that
22 would be favorable in terms of societal risk?
23 Just hypothetically.

24 MR. TYLER: There might be. We did not
25 look at that. What we are saying is that --that

1 basically we looked at the risks, and the risks
2 are -- are basically implausible. They're --
3 they're low enough to be considered insignificant.

4 MR. WILLIAMS: Okay. A third area, due
5 to the limitations of time here. Do you
6 understand what is meant, in a regulatory sense,
7 by grandfathering?

8 MR. TYLER: Yes.

9 MR. WILLIAMS: Could you explain your
10 understanding of that term?

11 MR. TYLER: Grandfathering --

12 MS. WILLIS: Could you explain maybe,
13 Mr. Williams, explain what you're trying to get
14 to?

15 MR. WILLIAMS: Then let me ask my next
16 question. Is it conceivable that it's good
17 practice, then, to tighten certain regulations,
18 the precedents in terms of siting ammonia
19 facilities in particular places that were
20 appropriate when it was agricultural should be
21 tightened up now that population growth has
22 occurred?

23 MS. WILLIS: I'm going to object to
24 vagueness. I'm not sure what you're trying to get
25 at.

1 MR. WILLIAMS: I'm trying to determine
2 if it's appropriate risk management policy to
3 tighten the regulatory requirements as population
4 density increases.

5 PRESIDING MEMBER LAURIE: Do you have
6 any understanding of the question?

7 MR. TYLER: Yes, I do. And I think in
8 fact we have -- I think in fact we have done that.
9 The general practice has been throughout time to
10 use anhydrous ammonia for these types of
11 applications. And we have, because -- well, we
12 haven't required it. The -- the proposal is to
13 use aqueous ammonia, which is intrinsically much,
14 much safer than the more commonly used anhydrous
15 form. So in fact, this proposal does incorporate
16 what I would consider pretty much state of the art
17 mitigation in that regard.

18 MR. WILLIAMS: Well, what I was getting
19 to is the fact that there is a large storage of an
20 ammonia in an area that's now surrounded by a
21 city, might be a grandfathered application that
22 would not be approved if it were applied for
23 today. Is that correct?

24 MR. TYLER: I -- I don't see any reason
25 to believe that that's the case. As a matter of

1 fact, there are approvals of anhydrous ammonia
2 frequently. There's approvals of anhydrous
3 chlorine tank siting. And to the best of my
4 knowledge, there's not always a clear relationship
5 excluding those where there are populations.

6 MR. WILLIAMS: Hypothetically, then, in
7 your view would it be good risk management policy
8 to -- to take into account the increase in
9 population density as you store hazardous
10 materials?

11 MR. TYLER: Absolutely. And -- and my
12 approach to mitigation would be to propose
13 intrinsically safer materials where populations
14 are in close proximity. And in fact, the
15 intrinsically safest form of ammonia is aqueous
16 ammonia.

17 MR. WILLIAMS: If it were
18 technologically possible to exclude the use of
19 ammonia at some point, would that be appropriate?

20 MS. WILLIS: I'm going to object.

21 MR. WILLIAMS: This is a hypothetical.

22 MS. WILLIS: You're going to have to
23 give him some background. I'm not sure where
24 you're going with that question.

25 MR. WILLIAMS: If there were another

1 technology for power plant that did not require
2 the use of ammonia at some locations would it be
3 appropriate to require that other technology?

4 MS. WILLIS: You're going to have to be
5 clear about what technology --

6 PRESIDING MEMBER LAURIE: Well, Ms.
7 Willis, if you're going to object, please --

8 MS. WILLIS: I'm sorry.

9 PRESIDING MEMBER LAURIE: -- object to
10 the Chair.

11 MS. WILLIS: I'm sorry.

12 PRESIDING MEMBER LAURIE: The question
13 is, in risk assessment, if some technology comes
14 along that allows a substitution for ammonia
15 that's safer, would you suggest using it.

16 DR. GREENBERG: And the answer to that
17 is perhaps, because often that I find in my 21
18 years of experience, you push one bubble down,
19 another one comes up. And it could very well be
20 that you reduce the risk to zero for aqueous
21 ammonia, but there is another risk that may be
22 greater. You have to be very careful.

23 PRESIDING MEMBER LAURIE: So is the
24 answer yes, depending on the circumstances?

25 DR. GREENBERG: Yes.

1 PRESIDING MEMBER LAURIE: Thank you.

2 MR. WILLIAMS: Thank you, Mr. Laurie.

3 A fourth general area of questioning
4 related to the number of accesses. First, let me
5 start theoretically to try to be brief.

6 Is it possible that if there were only
7 one system and one access, that the blockage or
8 failure of that access would be more severe? My
9 background is nuclear, and that would be a -- a
10 single point of failure situation. Is it possible
11 then that two accesses provide a more risk averse
12 -- more risk controlled situation than one access?

13 MR. TYLER: Quite frankly, looking at
14 this facility and the tank, and the vault below
15 the tank, and the vault that protects the delivery
16 area, I -- I can't conceive of a scenario that
17 would require a response from the Haz Mat team.

18 MR. WILLIAMS: Forgive me. Mr. Laurie
19 won't allow me to lay the background scenarios,
20 but if the rail truck crossing is blocked for some
21 reason, for example a parked railroad train, could
22 conceivably an accident be made more severe by
23 that situation?

24 MR. TYLER: What I said is I don't
25 believe that there's a plausible scenario for such

1 an accident. The probability of that is extremely
2 remote.

3 Secondly, you'd have to -- you'd have to
4 take the probability of that occurring
5 concurrently with the rail being blocked.

6 MR. WILLIAMS: Well, just theoretically,
7 because I don't much time here.

8 PRESIDING MEMBER LAURIE: You have two
9 minutes, sir.

10 MR. WILLIAMS: Is it good risk
11 management policy if you're trying to protect a
12 particular situation to have a backup? Would that
13 be a justification for the City of San Jose policy
14 requiring two accesses?

15 MR. TYLER: In general, I would say it's
16 a good idea to have two accesses. Yes.

17 MR. WILLIAMS: Thank you. The next
18 question relates to response time. Is it your
19 opinion that traffic congestion could
20 substantially change the response time of the
21 hazardous materials team. You -- do you believe
22 that that's possible in this particular situation
23 in Santa Clara Valley?

24 MR. TYLER: I -- I believe that -- that
25 it's most likely that the -- the fire department's

1 response to our questioning about response time
2 was more or less an average number. I would
3 expect that during rush hour or that if there were
4 any particular traffic congestion or increased
5 traffic congestion, that in fact that response
6 time would increase. Yes.

7 MR. WILLIAMS: Yes. Thank you. So to
8 be concise, it's possible that it could increase
9 from 30 minutes to one hour?

10 MR. TYLER: My guess is that it could be
11 that long during very severe traffic, even at --
12 at rush hour. That's a possibility.

13 PRESIDING MEMBER LAURIE: Thank you, Mr.
14 Williams. Your time is up, sir.

15 And Mr. Scholz.

16 MR. AJLOUNY: I thought I was next.

17 CROSS EXAMINATION

18 MR. SCHOLZ: Could you clarify why 75
19 parts per million of ammonia at property line is a
20 significant impact to you, but not a significant
21 impact should a release of 75 parts per million
22 happen out on the community streets, through a
23 traffic accident involving the delivery of ammonia
24 to MEC?

25 MR. TYLER: Staff has never suggested

1 that 75 ppm is a significance criteria. Staff
2 views 75 ppm as a de minimus criteria. In other
3 words, we, without question, would consider 75 ppm
4 to be a exposure level without consequence to the
5 public. That is an exposure de minimus level.
6 When we talk about significance, we're talking
7 about something having to do with probability of
8 exposure and serious impacts.

9 When we start assigning probabilities,
10 we move to more serious impacts such as lethality.
11 The primary use -- reason for using lethality is
12 it's well documented. And that's the standard
13 practice among most nations in the world, is to
14 look at -- because information on -- on actual
15 injuries is usually well defined and -- and
16 inaccurately reported.

17 MR. SCHOLZ: Thank you. That leads to
18 the next question. Why is fatality or lethality
19 figure of one in one million significant over a 70
20 year period for cancer burden, but a one in one
21 million over one year or six years probability due
22 to a MEC triggered traffic accident involving
23 ammonia insignificant?

24 MR. TYLER: In general, what we have
25 tried to do in establishing our criteria is to use

1 criteria that have been accepted by other
2 regulatory bodies. And in general, the statistics
3 and the methods for determining what is de
4 minimus, what's significant, and what requires
5 mitigation is -- is pretty much the same
6 throughout most of -- most large countries. So we
7 are using a standard that's been relatively widely
8 accepted as a basis. And that is that there would
9 be a risk of one times ten to the negative fourth
10 for one lethality, and one times ten to the
11 negative sixth for a -- up to a hundred
12 fatalities, and one times ten to the negative five
13 for ten fatalities. Potential fatalities.

14 MR. SCHOLZ: Thank you. In the interest
15 of time, would you agree that the public risk
16 associated in regards to -- to the South San Jose,
17 Santa Teresa, and Coyote Valley community
18 residents and businesses are solely due to the
19 operation of the proposed MEC facility?

20 DR. GREENBERG: Is your question the
21 total risk to an individual just due to the
22 proposed facility? Or are you --

23 MR. SCHOLZ: In regards to ammonia.

24 DR. GREENBERG: Well, I -- I believe
25 that there has been testimony that there may be

1 aqueous ammonia planned for use at other locations
2 in there. But maybe I'm not understanding your
3 question.

4 MR. SCHOLZ: I'm not sure that's been
5 established as a fact, so the only fact we know is
6 that MEC is using ammonia. So given those
7 circumstances, would you agree that the public
8 risk associated with ammonia to our community is
9 solely due to the operation of the proposed MEC
10 facility?

11 MR. TYLER: My response to that would be
12 it's highly unlikely, particularly with -- with a
13 main rail line running through the area. Aqueous
14 ammonia -- I mean, anhydrous ammonia is frequently
15 transported by rail. There's also large
16 agricultural operations throughout the area, and
17 anhydrous and aqueous ammonia are frequently
18 associated with those kinds of operations. So I
19 would say it's highly unlikely that the risk from
20 this facility is even the dominant risk associated
21 from exposure to ammonia, let alone the only one.

22 MR. SCHOLZ: Thank you. Is your
23 analysis regarding the insignificant risk
24 associated with project use, storage and
25 transportation of ammonia in any way influenced by

1 an improper assumption that ammonia is already
2 being transported through the MEC impacted
3 community?

4 MR. TYLER: No.

5 DR. GREENBERG: No.

6 MR. SCHOLZ: Thank you. I'm done.

7 HEARING OFFICER VALKOSKY: Thank you,

8 Mr. Scholz.

9 Mr. Ajlouny.

10 MR. AJLOUNY: Yes. In regards to time,

11 I've got quite a number of questions in the

12 beginning that a yes or no would be appreciated.

13 And I'll try to be --

14 HEARING OFFICER VALKOSKY: You've got a

15 maximum of ten minutes.

16 MR. AJLOUNY: Let me start my clock.

17 CROSS EXAMINATION

18 MR. AJLOUNY: Okay. Are you aware of

19 the two schools on Santa Teresa just south of

20 Bernal?

21 DR. GREENBERG: Yes.

22 MR. AJLOUNY: Are you aware that their

23 playground is about ten feet from Santa Teresa?

24 DR. GREENBERG: Yes.

25 MR. AJLOUNY: Are you aware across the

1 street from Santa Teresa and those schools,
2 there's low income housing for senior citizens?

3 DR. GREENBERG: No.

4 MR. AJLOUNY: Well, there is. Okay. Do
5 you have a -- do you have a preference for
6 transportation whether to come from Bernal and
7 Santa Teresa and go south, or come from Bailey and
8 Santa Teresa and go north?

9 MR. TYLER: I think it's our intent to
10 look at that, and that's why our condition asked
11 for a -- a plan that we can evaluate in more
12 detail.

13 MR. AJLOUNY: So that would be a
14 consideration that those schools and the thousands
15 of homes in that area coming from Bernal -- coming
16 from Bernal you'd be passing in those areas, and
17 it would help you determine that plan? Is that
18 part of it?

19 MR. TYLER: Yes.

20 MR. AJLOUNY: Thank you. Have you read
21 Todd Spellman's testimony?

22 MR. TYLER: Is that the one on --

23 MR. AJLOUNY: That's the one --

24 MR. TYLER: Worker --

25 MR. AJLOUNY: -- my witness.

1 MR. TYLER: Worker safety related. It's
2 the Fire Department Haz Mat?

3 MR. AJLOUNY: Yeah, the -- the guy from
4 the HIT team.

5 MR. TYLER: Yes, I did.

6 MR. AJLOUNY: Do you agree by having a
7 HIT team near the site would benefit the
8 surrounding community?

9 MR. TYLER: Yes, probably from --

10 MR. AJLOUNY: Thank you.

11 MR. TYLER: -- from several standpoints.

12 MR. AJLOUNY: Okay.

13 MR. TYLER: Not just this facility, but
14 in general that -- the closer that Haz Mat
15 response team, the better, if there's hazardous
16 materials being used.

17 MR. AJLOUNY: I'm just trying to get a
18 lot in in ten minutes. I don't mean to be rude.

19 Okay. Considering things like drunk
20 drivers, truck driver falling asleep, or a truck
21 being hit by a train, is there any difference
22 between let's say a soda truck, a Pepsi truck, and
23 an ammonia truck? In -- in that regard of
24 accidents, you know, a drunk driver hitting that
25 truck, being hit by a train, or -- is there any

1 difference --

2 PRESIDING MEMBER LAURIE: The question
3 is ambiguous, sir. What do you mean, any
4 differences to what?

5 MR. AJLOUNY: As far as likelihood of
6 accidents --

7 DR. GREENBERG: Oh, yes.

8 MR. AJLOUNY: Oh, yes?

9 DR. GREENBERG: Yeah. Difference in
10 likelihood of accident, yes.

11 MR. AJLOUNY: I don't mean of the
12 outcome of the accident. I'm talking about
13 becoming an accident, if a truck driver ran a red
14 light, he could hit a ammonia truck just as well
15 as he could hit a Pepsi truck. Am I making sense
16 or not?

17 MR. TYLER: In general, the data suggest
18 that the training associated with hazardous
19 materials transport that the drivers are
20 considerably better and considerably more
21 cautious, and so the rates are lower for those
22 types of shipments.

23 DR. GREENBERG: But there's also more
24 Pepsi trucks on the road than aqueous ammonia
25 trucks.

1 MR. AJLOUNY: Okay. Okay. But I -- I
2 was focusing in on like three scenarios to give
3 you an example, whether a drunk driver runs a red
4 light and hits a truck, if there are the same
5 amount ammonia trucks and the same amount of Pepsi
6 trucks, let's say, it could -- there's no
7 difference. There's not like a halo from God
8 around these trucks that says I'm not going to
9 allow you to -- you know what I mean? I don't
10 mean to be smart, but --

11 MS. WILLIS: Objection. I believe
12 they've answered the question.

13 MR. AJLOUNY: Okay, fine.

14 Are you aware of the Pepsi truck in
15 Coyote Valley that was hit by a train in Coyote
16 Valley during the process of this AFC?

17 MR. TYLER: I'm aware -- that was
18 brought to my attention by the Intervenor, yes.

19 MR. AJLOUNY: Okay. Just wanted to make
20 a point there.

21 Are you aware of the forklift rupturing
22 a ammonia line in the Watsonville area? In the
23 same timeframe of the AFC process, this AFC
24 process.

25 DR. GREENBERG: Yes, I believe that was

1 anhydrous ammonia.

2 MR. AJLOUNY: Okay. Is a forklift going
3 to be close to these tanks in Metcalf? I heard
4 someone talking about a forklift maybe going by,
5 or something.

6 DR. GREENBERG: Yes, it'll be close, but
7 I think the proper question is can a forklift
8 rupture a line, and I don't believe it could.

9 MR. AJLOUNY: Could it rupture the
10 tanks?

11 DR. GREENBERG: No.

12 MR. AJLOUNY: There's no possible way.

13 DR. GREENBERG: There's containment
14 around the tanks. It -- it would have to rupture
15 the containment before it could get anywhere near
16 the tank. I don't think the forklift has that
17 type of capability. But then again, you know, I'm
18 not aware of every single forklift. But I've
19 reviewed them, and I've been at a lot of
20 industrial facilities in my day.

21 MR. AJLOUNY: Okay. There's a --
22 there's a very, very remote possibility, but it
23 could happen.

24 DR. GREENBERG: I'd say it's zero.

25 MR. AJLOUNY: Okay. Fine. That's fair.

1 I just was curious.

2 What triggered your Condition of
3 Certification in TRANS-8, and I'm just talking
4 about the first two sentences on page 268 of your
5 testimony? I'll read it to you, so we --

6 DR. GREENBERG: Sure.

7 MR. AJLOUNY: Prior to the start of
8 commercial operation of MEC, the project owner
9 shall complete a two-lane secondary access
10 connection. At that time, the Blanchard Road
11 access will change to emergency use only.

12 What triggered that thought? What made
13 you put that in there?

14 MR. BROWN: A request from the City of
15 San Jose.

16 MR. AJLOUNY: Okay. Do you think that
17 two accesses are best for the surrounding
18 community?

19 MR. BROWN: Do you mean from a safety
20 standard, or for their use, or --

21 MR. AJLOUNY: Any area that your
22 expertise -- is it better than one?

23 MR. BROWN: My expertise is in
24 circulation, so with respect to circulation, no.
25 There's -- the community doesn't benefit from that

1 second point of access.

2 MR. AJLOUNY: As a hazardous response?

3 MR. BROWN: I'll let these gentlemen
4 answer now.

5 MR. AJLOUNY: Okay.

6 MR. TYLER: I think we already answered
7 it as yes, that there's -- it provides better
8 access to the facility in the event of fire or any
9 other type of emergency response, even someone
10 being down in the facility.

11 MR. AJLOUNY: Okay, great. Is the fact
12 that the Applicant might -- excuse me -- might not
13 be able to get the west access why you put the if
14 the city is -- quote, if the city is unable to
15 provide this right-of-way, then MEC may operate
16 with a single point of access? Is it just the
17 fact that they might not be able to get the second
18 access?

19 MR. BROWN: It's not completely within
20 their control, and therefore there's a possibility
21 that it would not happen. Yes.

22 MR. AJLOUNY: So the fact that it's not
23 in their control, you feel that it's okay to make
24 it lesser for the public safety, or, you know, I
25 just heard that two accesses are better, but

1 because they might not be able to get the two
2 accesses, you're willing to put the community at a
3 -- I don't --

4 PRESIDING MEMBER LAURIE: Well, that --
5 that's argumentative, sir. The testimony is two
6 access points are better.

7 MR. AJLOUNY: Okay.

8 HEARING OFFICER VALKOSKY: You've got
9 about two minutes left.

10 MR. AJLOUNY: I see. Two, yeah. I see
11 three myself, but -- I might be done, buddy. How
12 about that?

13 Stan, we'll just have a moment of prayer
14 for three -- no, I'm just kidding. Thank you very
15 much.

16 (Laughter.)

17 HEARING OFFICER VALKOSKY: Thank you.

18 Mr. Garbett, a maximum of three
19 questions or five minutes. That was your request.
20 Please proceed.

21 MR. GARBETT: William Garbett, on behalf
22 of the public.

23 I'll give a sentence here, and then I'll
24 ask the question.

25 ///

1 CROSS EXAMINATION

2 MR. GARBETT: The Public Utilities
3 Commission Rail Safety Division has in charge the
4 subject of rail safety at rail crossings.
5 Caltrain has had a high number of accidents, and
6 given this particular ratio, whenever someone asks
7 for a crossing gate or flashing lights, they
8 generally ask that the intersection be closed or
9 the grade separation be provided.

10 If this is the response of the Public
11 Utilities Commission to the Applicant's request,
12 thereby leaving Blanchard Road cut off, with no
13 crossing or an expensive at grade crossing, would
14 this doom the project, in your opinion?

15 MS. WILLIS: I'm going to object. I
16 don't think these witnesses can -- can answer
17 questions on the decision for the project.

18 HEARING OFFICER VALKOSKY: Okay. Why
19 don't we just --

20 MR. GARBETT: Can I state that simpler.

21 If you don't have an access at Blanchard
22 Road, would that end the project because of the
23 lack of even a single entrance?

24 MR. BROWN: Unless they're going to use
25 a helicopter, you need some way to get in, I

1 suppose. Yes.

2 MR. GARBETT: The City of San Jose on
3 October 24th, the year 2000, funded a Coyote
4 Valley Community Facilities District and included
5 Calpine/Bechtel, Cisco Systems, CVRP, and a few
6 other property owners in the area, and they gave
7 them, oh, about \$150 million worth of starting
8 money as free gift of public funds on tax money.
9 This will provide for the infrastructure of the
10 Coyote Valley.

11 Is there any obstacle now to the Western
12 Access Road to the Metcalf site, in your opinion?

13 MR. BROWN: First, let me say I don't
14 know anything about the -- the premise to your
15 statement. In terms of obstacle, do you mean --
16 if you mean does the Applicant have the ability to
17 construct it?

18 MR. GARBETT: It's been funded by city
19 money.

20 MR. BROWN: I don't know that. The only
21 thing I can say is that the Applicant can only
22 construct what's on their property, and no more.
23 If other -- others have the ability to construct
24 the rest of the system, but I don't know to what
25 extent that's been funded or unfunded. I'm not

1 privy to that.

2 MR. GARBETT: Thank you. That's my
3 questions.

4 HEARING OFFICER VALKOSKY: Thank you,
5 Mr. Garbett.

6 PRESIDING MEMBER LAURIE: You don't have
7 any redirect, do you, Ms. Willis?

8 (Laughter.)

9 MS. WILLIS: No, I do not.

10 PRESIDING MEMBER LAURIE: I'm sorry.
11 Mr. Smith.

12 MR. SMITH: I do have one or two quick
13 questions.

14 Regarding the Applicant's testimony
15 earlier of the training capability, the first
16 responder training, does Staff have an opinion on
17 the suitability of that level of training for this
18 sort of facility?

19 MR. TYLER: In general, that's the type
20 of training that is appropriate at this type of
21 facility. You have more people trained at the --
22 at the first level of ability to respond. In
23 other words, recognize a hazard, get people out of
24 the area, notify the right people. They've also
25 said they'll have someone who's able to respond at

1 the next level, which means that they basically
2 make some attempt to try to mitigate the
3 situation. To do that, you -- you really have to
4 make sure that you have the proper equipment, such
5 as self-contained breathing apparatus, because the
6 environment may be IDOH environment; in other
7 word, endangering the person who goes in to make
8 the corrections. In other words, shut off a valve
9 or something like that.

10 So what they're saying basically is for
11 most of the types of incidents that would occur,
12 that they would have the ability to respond to
13 those, other than some very large type of
14 catastrophic event. And in light of the type of
15 mitigation that's been imposed here by Staff, and
16 to the extent of having catchment basins below the
17 -- between the delivery truck and the tank, and
18 underneath the tank, that pretty much precludes
19 any kind of an accident that would be of a large
20 magnitude.

21 In other words, those -- those occur
22 passively, by gravity. If, for instance, there's
23 a rupture of a hose or a bad connection, gravity
24 would draw the material down into the sump and
25 prevent downwind concentrations. So in light of

1 the mitigation and the intrinsic nature of the
2 materials involved, I would say it would be
3 unlikely that they would need outside response,
4 and that the level of training is appropriate.

5 MR. SMITH: So there -- there wouldn't
6 be any reasonable argument for increasing the
7 training to a higher level, such as what was
8 described in Mr. Spellman's testimony? Increasing
9 the training level, or increasing the
10 capabilities, onsite capabilities to handle, to
11 respond to an accident?

12 MR. TYLER: I think those levels of
13 training are appropriate for someone who's going
14 to -- who may be required to respond to that type
15 of a very serious event. I don't think that it's
16 at all likely that that type of event would occur
17 at this facility.

18 So, in other words, I think it's
19 appropriate for the fire department, and in the
20 very unlikely scenario which I can't really
21 envision, that some sort of response was
22 necessary, the fire department would be able to
23 provide that.

24 And that if the city believes that
25 there's a necessity for that level of protection

1 associated with this facility, we've also provided
2 that they be given funding through the Worker
3 Safety conditions to basically augment whatever
4 services are necessary to -- to respond
5 effectively to this facility, and to be reimbursed
6 for those, that the Applicant would be reimbursed
7 through whatever mechanisms they agree to.

8 In other words, they would fund it in
9 advance so it would be there to protect the
10 public, and then it would be dealt with through
11 tax revenues.

12 PRESIDING MEMBER LAURIE: Thank you, Mr.
13 Tyler.

14 MR. SMITH: Just one -- one follow-up.
15 Is the level of training, the first responder
16 awareness and operational training level, is that
17 the sort of issue that would be dealt with in the
18 Risk Management Plan?

19 DR. GREENBERG: I'll respond to that.
20 Actually, it would be dealt with in two areas. It
21 would be part of an emergency response plan, which
22 is part of the business plan. And Cal-OSHA
23 requires it also, and they call it an emergency
24 action program. That's part of 8 CCR 3220.

25 So it's going to be dealt with either in

1 Worker Safety or in the Haz Mat section, but
2 they're going to -- they're going to have that
3 type of emergency response plan.

4 HEARING OFFICER VALKOSKY: Last
5 question. In your opinion, is it necessary to
6 reduce the HIT team's estimated response time of
7 30 to 60 minutes in order to reasonably assure
8 protection of the public health and safety from
9 hazardous materials accidents which are likely to
10 occur at the MEC project site?

11 MR. TYLER: As I stated earlier, I
12 believe that the -- the risks associated with
13 accidental release have been mitigated to a level
14 that would virtually preclude any sort of serious
15 incident at the facility. The only way that we
16 could have an incident is if something happened to
17 the truck -- onsite, at least, if something
18 happened to the truck between the gate at the
19 facility and the delivery point itself. That is
20 very unlikely --

21 PRESIDING MEMBER LAURIE: Can -- can you
22 answer the question yes or no? Stan, go ahead and
23 ask him the question again, and if you can answer
24 yes or no, please do so.

25 MR. TYLER: Okay.

1 HEARING OFFICER VALKOSKY: In your
2 opinion, is it necessary to reduce the HIT team's
3 estimated response time of 30 to 60 minutes in
4 order to reasonably assure protection of the
5 public health and safety from hazardous materials
6 accidents which are likely to occur at the MEC
7 project site?

8 MR. TYLER: No.

9 PRESIDING MEMBER LAURIE: Thank you,
10 sir. The witnesses are excused. We'll give Ms.
11 Wong a chance for comment.

12 MS. WONG: I have three questions.

13 PRESIDING MEMBER LAURIE: No, no, no.
14 Go ahead and your --

15 MS. WONG: Okay, please. Dr. Greenberg
16 cited the death risk as insignificant. Is there
17 anything less than death that is taken to be
18 significant to residents living in the
19 neighborhood? In other words, should we be happy,
20 residents be happy that we don't die in our own
21 home?

22 Dr. Greenberg quoted a property release
23 of 13.4 ppm out of 75 ppm, and quoted -- as
24 insignificant, and quoted 1.6 to 4 ppm that some
25 people might detect the odor and experience

1 irritation after one hour. Is repeated odor and
2 irritation a significant impact to residents.
3 That's my second question.

4 Third question is, Dr. Greenberg stated
5 that the risk estimates are overestimated, and
6 cited 75 ppm is the concentration for 30 minute
7 one-time accidental release concentration. How
8 can this be an overestimate of the risk when this
9 is a one-time exposure of 30 minutes, and the
10 exposure time that would actually occur would be
11 long -- much longer because of the routine
12 emissions. That's my third question.

13 HEARING OFFICER VALKOSKY: Excuse me.
14 Dr. Greenberg, or Mr. Tyler, could you just
15 provide very brief responses to the questions that
16 were just raised.

17 DR. GREENBERG: I believe that most of
18 the questions go to the impacts of less than
19 lethal concentrations of ammonia. And in our
20 testimony, I provided a chart that I think you
21 referred to.

22 MS. WONG: Uh-huh.

23 DR. GREENBERG: We are talking here of
24 transitory health impacts. Ammonia is really not
25 that toxic. It smells bad, it causes you to tear,

1 and you can cough a bit, but it's -- because it's
2 water soluble it's removed in the upper airways
3 very quickly. And it really doesn't induce
4 cellular damage until you're -- you get up there
5 in those higher concentrations above 600, and
6 actually above a thousand parts per million.

7 MS. WONG: But -- but you are --

8 DR. GREENBERG: Let me finish --

9 HEARING OFFICER VALKOSKY: Ms. Wong,
10 we're not going to have a dialogue here.

11 MS. WONG: All right, okay.

12 DR. GREENBERG: And so, you know, it's
13 not that we're saying that people might not get
14 irritation at a level less than the lethal level,
15 but that is the traditional method, as Mr. Tyler
16 had explained, and I agree with his explanation,
17 of risk assessment when you're looking at the
18 probability of significant impacts.

19 People can move away from the
20 transportation risk area. In other words, if
21 there is a spill from a transport risk, they can
22 move around. We -- we need to have a measuring
23 outcome, and that outcome is lethality when we're
24 talking about significance.

25 MS. WONG: Are you aware that --

1 HEARING OFFICER VALKOSKY: Ms. Wong,
2 we're not going to have a dialogue.

3 MS. WONG: Oh, okay.

4 HEARING OFFICER VALKOSKY: This was just
5 a courtesy response --

6 MS. WONG: How about my --

7 HEARING OFFICER VALKOSKY: -- to the
8 concerns you raised.

9 MS. WONG: -- how about my second
10 question. My second question is that you have
11 cited the property release to be 13.4 ppm out of
12 75 ppm as insignificant, and quoted 1.6 to 4 ppm,
13 that some people might detect odor and might
14 experience irritation after one hour. My question
15 is, is repeated odor and irritation a significant
16 impact to residents?

17 DR. GREENBERG: No.

18 HEARING OFFICER VALKOSKY: Okay, next
19 question.

20 MS. WONG: Why?

21 DR. GREENBERG: That's not how we define
22 significance.

23 HEARING OFFICER VALKOSKY: I --

24 DR. GREENBERG: If you're -- if you're
25 asking me is that a, you know, a nuisance if it

1 happens every day, then I might say that that's a
2 nuisance. But that's not a significant impact in
3 terms of public health regulatory decisions.

4 MS. WONG: Okay. My third question is,
5 you have stated that the risk estimates are
6 overestimated, and cited 75 parts per million as
7 the concentration for 30 minute one-time
8 accidental release. How can this be an
9 overestimate of the risk when this is for a one-
10 time exposure of 30 minutes, and the actual
11 exposure would be much longer given that it is a
12 routine emission.

13 DR. GREENBERG: Your question
14 demonstrates that you're confused about my
15 testimony, and it would take me a long time to
16 explain that, because I didn't say what you said I
17 did.

18 HEARING OFFICER VALKOSKY: Okay. Thank
19 you.

20 Ms. Grueneich, when you're ready, please
21 proceed.

22 MS. GRUENEICH: Okay. At this time CVRP
23 would like to call Steven Radis. He has
24 previously been sworn in.

25 ///

1 TESTIMONY OF

2 STEVEN RADIS

3 called as a witness on behalf of Intervenor CVRP,
4 having been previously duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. GRUENEICH:

8 Q Okay. Mr. Radis, do you have before you
9 Exhibit 33, the document we have identified as
10 Exhibit 33?

11 A I'm assuming you're talking about my
12 testimony?

13 Q Yes.

14 A Yes, I do.

15 MS. GRUENEICH: Okay. Mr. Valkosky, am
16 I correct that Mr. Radis -- or, I should ask you,
17 should Mr. Radis be sworn in again?

18 HEARING OFFICER VALKOSKY: Mr. Radis has
19 been previously sworn. Is that correct?

20 MS. GRUENEICH: Correct.

21 HEARING OFFICER VALKOSKY: Again,
22 assuming it hasn't worn off, I'm -- I'm willing to
23 put up with it.

24 THE WITNESS: It's worn, but not worn
25 off.

1 (Laughter.)

2 BY MS. GRUENEICH:

3 Q Okay. Mr. Radis, do you have any errata
4 to the document that we have identified as Exhibit
5 33?

6 A Yes, I do. As pointed out by the
7 Applicant, on page 6, Section 2, third page, first
8 sentence, we had noted 100,000 pounds of Triact
9 1800. It is 2,000 gallons, as noted by the
10 Applicant.

11 HEARING OFFICER VALKOSKY: I'm sorry, is
12 that 2,000 gallons or 2,000 pounds?

13 THE WITNESS: Two thousand gallons, or
14 up to about I think the Applicant said 16 to
15 20,000 pounds.

16 HEARING OFFICER VALKOSKY: Thank you.

17 THE WITNESS: Also, as pointed out by
18 the Staff's witness, on page 3, under HAZ-5, the
19 last sentence currently reads 77 parts per
20 million. We're not giving up two parts per
21 million, it should be 75.

22 BY MS. GRUENEICH:

23 Q Are those all your errata?

24 A Yes, they are.

25 Q Was the document we have identified as

1 Exhibit 33 prepared by you or under your direction
2 and supervision?

3 A Yes, it was.

4 Q To the extent that the testimony
5 contains facts, are those facts true and correct
6 to the best of your knowledge?

7 A Yes.

8 Q And to the extent that the testimony
9 contains opinions, are these opinions your own?

10 A Yes.

11 Q Of the conditions that are proposed in
12 Exhibit 33, taking into account the amended
13 conditions that Staff has presented and have been
14 discussed today, which are the most important, in
15 your opinion, to protect public health and safety,
16 that have not already been included within the
17 amended conditions by Staff?

18 A I believe that under HAZ-3, that -- and
19 I should clarify HAZ-3. We talk about vehicle
20 inspection and maintenance plans or programs, we
21 talk about driver training. Our intent here is
22 not to have the Applicant reinvent the wheel and
23 develop all these programs. They could adopt
24 basically DOT and State of California programs.
25 Our intent here is to make sure that they select a

1 carrier that is in compliance with this, that they
2 stipulate that they be in compliance and that they
3 have some kind of audit program.

4 For anhydrous ammonia, the California --
5 California Fertilizer Association actually will
6 certify carriers. I'm not convinced that that's
7 available for aqueous ammonia, and would probably
8 limit the Applicant too much. But I think as part
9 of their procurement they could make sure that
10 their carriers do comply with this, and that would
11 be adequate.

12 The, I think, key to this particular
13 condition is really limiting when ammonia is
14 delivered to the site. We've heard a lot about
15 the Agnews facility. It's located to a Cisco
16 building right now. They currently deliver
17 ammonia only on weekends. In the case of CVRP,
18 during the weekend you would not have 20,000
19 people at the site. You would not have two
20 daycare centers occupied with children. If Santa
21 Teresa Boulevard were to be used through the CVRP
22 site, it would pass right by a daycare center. At
23 least as currently proposed.

24 That's why we would recommend limiting
25 ammonia deliveries to weekends or holidays, and

1 preferably during daytime hours. There's two
2 reasons for the daytime hours. One is it avoids
3 driver fatigue. We don't want to, you know,
4 stipulate that they drive in the middle of the
5 night. And secondly, in the event of a spill,
6 dispersion is typically better during daytime
7 hours, and so the hazard zones are much smaller.

8 I think we heard a bit about the
9 containment system onsite. That would be the
10 vessel of secondary containment. It was unclear
11 to me -- it's a little clearer after today --
12 whether or not water sprays would be utilized. I
13 think with the Staff's condition and the
14 stipulation of water spray, that that would be
15 acceptable, and probably as acceptable as an
16 underground tank or double-walled containment.

17 I happen to be co-author of a book
18 entitled Post Release Mitigation in the Chemical
19 Process Industries. We prepared that for the
20 American Institute of Chemical Engineers. We
21 evaluated the effectiveness of water spray in
22 ammonia specifically, and I feel it would be quite
23 effective in this case.

24 Typically, the effectiveness is a
25 function of the amount of water and the amount of

1 ammonia. In this case, at low concentrations, and
2 I'm assuming the typical volume of water that you
3 would have with water spray, it would probably
4 more than exceed the Staff's proposed performance
5 criteria of 75 ppm.

6 Q Just -- just to clarify, with regard to
7 the proposed condition in HAZ-3, under where it's
8 limit ammonia deliveries to
9 daytime/weekends/holidays, am I correct in
10 understanding that the proposal is to limit
11 deliveries to weekend and holidays during the
12 daytime?

13 A Correct. Originally, I had written this
14 as daytime weekends, and then threw in holidays at
15 the end, and now that I look at it, it is quite
16 confusing.

17 Q In the interest of time, I will not ask
18 you to summarize the analyses or conclusions in
19 the two appendices. But we did hear this evening
20 for the first time the Staff's critique of some of
21 the analysis in there, and I would just ask you
22 briefly if you have any comments on the comments
23 that were made.

24 A Generally, I would disagree with Dr.
25 Greenberg, and I don't think we'd ever come to

1 resolution on this. The methodology that we
2 follow is -- basically it was developed by the
3 Department of Transportation. It's also the
4 published methodology for the American Institute
5 of Chemical Engineers, Center for Chemical Process
6 Safety. These are widely accepted methodologies.

7 In terms of the specific comment on
8 truck accident rates, while accident rates might
9 be better for trucks carrying hazardous materials,
10 they're not so substantially better that you can
11 just discount them as being insignificant. These
12 accidents do happen. When you try and evaluate
13 certain chemicals in certain states, you might be
14 able to say yeah, there haven't been aqueous
15 ammonia spills in California over a certain period
16 of time. However, nationwide, you'll find that
17 there have been aqueous ammonia spills.

18 There have been recent anhydrous ammonia
19 releases in the State of California that resulted
20 in fatalities, approximately a year ago on
21 Interstate 5, a tanker coming I think from
22 Stockton.

23 So, anyway, again, I don't think we're
24 going to agree on that, in terms of what the
25 proper methodology would be, except that I believe

1 I've followed the acceptable guidelines that are
2 currently in use.

3 Q And, finally, what is your understanding
4 of the proposed use of ammonia at the proposed
5 CVRP development?

6 A My understanding about their proposed
7 use of ammonia, as well as with all other
8 hazardous materials, is these are chemicals that
9 would be used in a laboratory at extremely small
10 quantities, probably, in most cases, not even a
11 gallon. These are -- these are not large
12 quantities of vessels of material. They're
13 strictly for laboratory use. There will be no
14 industrial use of chemicals there.

15 MS. GRUENEICH: Mr. Radis is now
16 available for cross examination.

17 HEARING OFFICER VALKOSKY: Thank you,
18 Ms. Grueneich.

19 Mr. Harris.

20 MR. HARRIS: Thank you.

21 CROSS EXAMINATION

22 BY MR. HARRIS:

23 Q Mr. Radis, I'm going to focus on your --
24 your written testimony. Can you turn to -- I'll
25 give you the page number -- Appendix A, page 8,

1 and Section 1.7.2. In that section you're talking
2 about your analysis, and specifically about
3 meteorological conditions. Is that correct?

4 A Yes, it is.

5 Q Which data did you use for your
6 meteorological conditions?

7 A This is the IBM facility.

8 Q And is it your testimony that the IBM
9 facility weather data is the most representative
10 data for the Metcalf project?

11 A I believe it's the only data available
12 for the area.

13 Q So is it the best meteorological data
14 available for analyzing this -- this particular
15 project?

16 A Yes, it is, and it was used by the
17 Applicant and Staff, as well.

18 Q Okay. So you concur that it is the best
19 available.

20 A Yes.

21 Q Thank you. In terms of your analysis,
22 Appendix A, page 18. Could you -- would you read
23 the last paragraph of your testimony, please?

24 A Under societal risk guidelines, the risk
25 would still be in the gray region --

1 Q No, I'm sorry. The final paragraph.

2 A Oh, I'm sorry. Okay. No risk profile
3 has been presented for fatalities since under the
4 mitigated scenario no fatalities were projected to
5 occur.

6 Q And this is your analysis of onsite
7 consequence; is that correct?

8 A Yes, it is.

9 Q So your conclusion about onsite
10 consequences is that there's no risk of
11 fatalities; is that correct?

12 A The risk would be lower than one
13 fatality, and off the scale of the criteria that
14 we used.

15 Q But your --

16 A Which indicates that it's an extremely
17 unlikely occurrence.

18 Q So your written testimony, again,
19 though, is that no fatalities were projected to
20 occur onsite. Is that correct?

21 A That's how we stated it, yes.

22 Q Okay. Now, turning to Appendix B of
23 your written testimony, on page 5. And about the
24 middle of the page, Section 1.3, you state, and
25 let me read. The fatality risk profile was not --

1 is not shown due to extremely low probability of
2 an onsite fatality resulting from onsite releases.
3 Is that your testimony?

4 A Yes, it is.

5 Q Thank you. Mr. Radis, were you aware
6 that in the FSA Condition of Certification STRUC,
7 that's Structural, Structural-4, specifically
8 addresses the -- the situation related to the
9 storage of hazardous materials?

10 MS. GRUENEICH: Excuse me. Could we have
11 a page cite, or a moment --

12 MR. HARRIS: That would be page 604 of
13 the AFC. It's in the Structural section. I
14 realize that's not part of your testimony, but --

15 HEARING OFFICER VALKOSKY: Is that of
16 the AFC or the FSA?

17 MR. HARRIS: I'm sorry, FSA. Did I say
18 AFC? My mistake. Final Staff Assessment.

19 PRESIDING MEMBER LAURIE: Hold on a
20 minute -- hold on until --

21 MR. HARRIS: Well, it's proposed
22 condition STRUCT-4. Structural-4.

23 MS. GRUENEICH: If you could --

24 MR. HARRIS: I'll give you -- I'll give
25 you a minute. Do you have a copy?

1 MS. GRUENEICH: Yes.

2 MR. HARRIS: You can -- of the FSA --
3 yeah, we've got several, I think.

4 HEARING OFFICER VALKOSKY: Just make
5 sure the witness has one, and counsel has one.

6 (Inaudible asides.)

7 BY MR. HARRIS:

8 Q And the question was, were you aware
9 that this condition, Structural-4, on page -- am I
10 on the wrong page -- okay, we're back to our
11 Internet problem. It was page 604, and I'll --
12 I'll read you that condition.

13 It says, tanks and vessels containing
14 quantities of toxics or hazardous materials
15 exceeding amounts specified in Chapter 3, Table
16 3-E of the 1998 CVE -- CBC shall, at a minimum, be
17 designed to comply with occupancy category 2 of
18 the 1998 CBC.

19 Now, recognizing you're not a -- an
20 expert in the CBC, were you aware that this
21 condition relating to the storage of hazardous
22 materials onsite was part of the FSA?

23 A No, I was not.

24 Q And -- and in that connection, then,
25 with this condition already in the FSA, isn't your

1 proposed HAZ -- excuse me, your proposed HAZ-13 is
2 unnecessary. Isn't that correct? You can answer
3 yes or no.

4 A I would probably have to think about
5 this for a while, not being familiar with the
6 exact requirements.

7 Q Okay. Assuming that those exact
8 requirements relate to the storage of hazardous
9 materials -- again, I'm asking you to assume
10 subject to check -- based on that hypothetical,
11 your Hazardous Materials 13 would be irrelevant
12 and redundant. Isn't that correct?

13 MS. GRUENEICH: To clarify the exact
14 requirements, are you referring to -- I guess I
15 could ask -- ask for clarification of what you
16 meant by exact requirements.

17 MR. HARRIS: I'm not assuming that the
18 witness is an expert related to the CBC. So
19 subject to check on the -- on the CBC.

20 MS. GRUENEICH: My -- is -- HAZ-13 has
21 to do with the local requirements, and what you're
22 bringing up is that STRUCT or the CBC are the
23 local ones? That's the part I'm confused about.

24 BY MR. HARRIS:

25 Q No. We have had some discussions about

1 the storage of hazardous materials onsite. And
2 the question that I posed to the witness, if
3 Structural-4 deals with the storage of hazardous
4 materials, that makes Hazardous-13 you've proposed
5 irrelevant. Isn't that correct?

6 A I am not convinced of that. I would
7 have to evaluate the requirements of these codes
8 to make sure that they would be consistent with
9 HAZ-13. And in the absence of that, I would not
10 see a problem with redundancy. If they say the
11 same thing twice and it's said twice, I don't see
12 that as a problem. And this also deals with an
13 occupancy category, which lead me -- leads me to
14 believe it deals more with just storage of
15 chemicals in occupied buildings.

16 Q Okay. That -- I don't want -- we're
17 talking about this one. But basically, I wanted
18 to call that to your attention. We'll move on.

19 Going back to your analysis again. On
20 page 4 of Appendix A, Table 1. You've shown here
21 routes associated with your proposed -- with your
22 analysis. Is that correct?

23 A That's correct.

24 Q And those routes begin at the Port of
25 Stockton to I-5, and that's Segment A. Is that

1 correct?

2 A That's correct.

3 Q And there's Segments A through G, with
4 the final segment, G, arriving at the site. Is
5 that correct?

6 A That's correct.

7 Q So the underpinnings of your study,
8 then, assumed a segment analysis of your
9 anticipated trip of the aqueous -- aqueous ammonia
10 to the site. Is that correct?

11 A Yes.

12 Q So if the aqueous ammonia does not
13 originate in Stockton, California, then your
14 analysis is irrelevant. Isn't that correct?

15 A No, actually it's not. I also evaluated
16 the -- as did Staff -- the final ten miles of the
17 delivery, which was essentially the portion within
18 San Jose.

19 Q Okay. Well, let me -- let me rephrase
20 the question, then.

21 As to the portions of your segments A,
22 B, C, D, E, those segments, assuming that the
23 ammonia did not originate in Stockton, your
24 analysis as to those segments would no longer
25 apply. Isn't that correct?

1 A That's not necessarily true.
2 Frequently, suppliers are not producing ammonia at
3 their delivery point, and Stockton happens to be
4 one of the major origination points of ammonia for
5 the State of California.

6 Q And I've -- I've asked you to assume
7 that it does not, for my -- for my hypothetical,
8 assuming that the Stockton -- that the ammonia
9 does not originate in Stockton, then segment A
10 would not be a correct segment for your analysis.
11 Isn't that correct?

12 A If the ammonia were produced at a
13 different location, not just shipped from there,
14 but produced, then segment A would not apply.

15 Q Okay. Assuming that now, as the
16 foundation, segment B then would also not apply,
17 because segment A connects to segment B. Isn't
18 that correct?

19 A Sure.

20 Q Okay. Thank you. We got there.

21 MS. GRUENEICH: We're just about at the
22 15 minute mark.

23 MR. HARRIS: Thank you.

24 BY MR. HARRIS:

25 Q In terms of your interest, you state

1 that the -- that the Cisco campus is close to the
2 facility, I think you said within a thousand feet.
3 What's the distance between the project and the
4 Cisco campus?

5 A Are we talking property boundary to
6 property boundary?

7 Q In feet. Your testimony says 1,000
8 feet. Is it 1,000 feet?

9 A I believe, from the maps I've seen,
10 however poor quality they might be, that the
11 approximate distance between the corners of the
12 property boundaries would be a thousand feet. The
13 -- obviously, the developed parts of the campus
14 would be further downwind from that.

15 Q Thank you. Now, you say CVRP's interest
16 in this testimony is protecting the CVRP
17 employees, their children, and the residences.
18 That's on page 1 of your testimony. Is that
19 correct?

20 A Yes.

21 Q And you mentioned previously the Agnews
22 facility. Isn't that correct?

23 A That's correct.

24 Q Now, the Agnews facility, as you
25 mentioned, has anhydrous ammonia; is that correct?

1 A Yes, it does.

2 Q And the Agnews facility is closer to the
3 -- excuse me, not CVRP, the Cisco campus than the
4 MEC facility is to the CVRP campus. Isn't that
5 correct?

6 A It's quite close.

7 Q It's about 150 feet; isn't that correct?

8 A Sounds about right.

9 Q And even though it's 150 feet away, the
10 Cisco ES&H folks have determined that it's safe
11 for their employees to work at that Agnews
12 facility; is that correct?

13 A I do not know that they have made that
14 finding. I do know they have concerns, and that
15 they conduct extensive drills --

16 Q Is that facility still open?

17 MS. GRUENEICH: Excuse me. I think
18 there was an interruption. I'm not sure he had
19 finished the answer.

20 MR. HARRIS: You interrupted me.

21 HEARING OFFICER VALKOSKY: Mr. Harris,
22 let the witness finish answering.

23 Continue, Mr. Radis.

24 THE WITNESS: That they have extensive
25 drills, they practice shelter place during these

1 drills. And basically, you know, have to co-exist
2 with that situation.

3 BY MR. HARRIS:

4 Q Is that facility still open?

5 A Which facility are you talking about?

6 Q The Agnews facility and the Cisco campus
7 surrounding it.

8 A Yes, it is.

9 Q Are you aware of any plans to close that
10 facility based on public health concerns?

11 A No.

12 Q Is it your professional judgment that if
13 the Cisco ES&H folks have allowed that campus to
14 continue to operate, that they've determined that
15 it is safe for their employees to work there?

16 A I don't know that I can make that
17 determination. I think that given the financial
18 realities of just closing down a business campus,
19 they have to make do with what they've got there.

20 Q So based upon a financial calculation,
21 do you think it's still considered safe?

22 A Let me -- let me put it another way.
23 The probability of an accident at the Agnews
24 facility is such that it should not happen in the
25 lifetime of the facility. These are not events

1 that occur frequently at any given facility.
2 Therefore, you would not necessarily make a
3 decision to close a business campus or corporate
4 headquarters, or move them, on an event that you
5 think should not happen, but has the probability
6 that it could.

7 Q Okay. And that's the existing
8 facility. I want to go now to the new proposed
9 facility in Alviso. That new Cisco campus is near
10 the wastewater treatment plant; isn't that
11 correct?

12 A I am totally unfamiliar with that
13 facility.

14 Q Okay. Assume for the purposes of my
15 question that it is near the wastewater treatment
16 facility. Would a wastewater treatment facility
17 typically use anhydrous ammonia or other ammonias?

18 A I understand that some do.

19 Q And would they use other hazardous
20 materials, such as chlorine?

21 A They could use chlorine, or
22 hypochlorite.

23 Q And --

24 MS. GRUENEICH: Excuse me.

25 ///

1 BY MR. HARRIS:

2 Q And in this hypothetical --

3 MS. GRUENEICH: Excuse me.

4 HEARING OFFICER VALKOSKY: Excuse me.

5 We've got --

6 MS. GRUENEICH: In the interests of the
7 request from the Hearing Officer, I substantially
8 cut back on what I believed was --

9 MR. HARRIS: I have one more question
10 after this.

11 MS. GRUENEICH: -- was the appropriate
12 time.

13 HEARING OFFICER VALKOSKY: One -- just
14 one more question.

15 MR. HARRIS: After finishing this one.

16 HEARING OFFICER VALKOSKY: Okay. And
17 that's it.

18 MR. HARRIS: And I was just about to
19 finish that.

20 BY MR. HARRIS:

21 Q In the hypothetical I posed, would the
22 determination have been made -- excuse me, let me
23 back up.

24 Assuming the wastewater treatment
25 facility, assuming aqueous ammonia, the chlorine,

1 the other hazardous materials, if a project was
2 sited within 1500 feet of such a facility, in your
3 professional judgment, has there been a
4 determination made that it's safe for employees in
5 that new facility?

6 A Not necessarily. My understanding is,
7 and not necessarily related to this particular
8 facility, but with the current corporate
9 headquarters, that in many cases there was a lack
10 of due diligence on looking at what was around
11 their facilities, and --

12 Q We're not --

13 A -- to the fact that that could occur.

14 Q Okay. I wasn't talking about Agnews.

15 A I understand, but I -- I can't read
16 their mind. I only know in relation to Agnews
17 what I've been told. I don't think --

18 Q Thank you.

19 A -- anything about the new campus.

20 Q Thank you. Regarding the CVRP
21 development, you state that there'll be high tech
22 manufacturing and that there's a possibility of
23 delivery of ammonias and other hazardous
24 materials. Is that correct? I believe Ms.
25 Grueneich asked you about the use of ammonia and

1 other materials. Is that correct?

2 MS. GRUENEICH: I didn't state what type
3 of ammonia.

4 THE WITNESS: Very small quantities of
5 laboratory scale type chemicals. Yes.

6 MS. GRUENEICH: We've now moved past the
7 one question.

8 MR. HARRIS: Well, I'm on my last
9 question, if I could finish it.

10 HEARING OFFICER VALKOSKY: Okay. Please
11 do.

12 BY MR. HARRIS:

13 Q The possible use of those hazardous
14 materials, how much will be stored onsite, even
15 though the quantities are small, you said.

16 A I understand that they will be well
17 below threshold reporting quantities, and would
18 not be something that would be considered a risk
19 to their employees, even in the same building.

20 PRESIDING MEMBER LAURIE: Thank you.
21 That's all you get, Mr. Harris.

22 MR. HARRIS: Thank you.

23 HEARING OFFICER VALKOSKY: Staff.

24 MS. WILLIS: We have no questions.

25 HEARING OFFICER VALKOSKY: There have

1 been no other parties indicate their desire to
2 cross examine this witness, so we'll move to
3 redirect. Ms. Grueneich.

4 MS. GRUENEICH: None.

5 HEARING OFFICER VALKOSKY: Thank you.

6 Anything else for this witness?

7 MS. GRUENEICH: Oh, I'd like to move the
8 testimony into evidence.

9 HEARING OFFICER VALKOSKY: Is there
10 objection?

11 Seeing no objection, Exhibit 33 is
12 received into evidence.

13 (Thereupon Exhibit 33 was received
14 into evidence.)

15 HEARING OFFICER VALKOSKY: Thank you,
16 Mr. Radis. You're excused.

17 Is there any public comment on the areas
18 of Traffic, Transportation, and Hazardous
19 Materials Management?

20 MR. AJLOUNY: Stan, I made a major
21 mistake, and I'm wondering if I could -- since I
22 have three minutes, I -- just real quick.

23 HEARING OFFICER VALKOSKY: Real quick
24 what?

25 MR. AJLOUNY: Real --

1 HEARING OFFICER VALKOSKY: What do you
2 intend to do? Mr. Radis, hang on.

3 MR. AJLOUNY: Not -- not with Mr. Radis.

4 HEARING OFFICER VALKOSKY: Okay. I'm
5 sorry.

6 MR. AJLOUNY: Because of my lack of
7 experience, I forgot to mention and ask the
8 question if Staff knew about the proposed fire
9 station in the Coyote Valley, because of other
10 building -- building that would, you know, Coyote
11 Valley Research Park, and stuff.

12 I guess when I think about it, if they
13 didn't know about that, and having a HIT team fire
14 station in Coyote Valley is a big jump, but if
15 they knew that there was a fire station already
16 planned, and to make it a HIT team, it's a minor
17 jump. And I just wanted to let Staff -- see if
18 they realize that, and if they did, if they had a
19 different answer to your last question. That's
20 all I'm asking.

21 HEARING OFFICER VALKOSKY: Mr. Tyler,
22 can you respond to that out of courtesy to Issa?

23 MR. TYLER: Is the microphone on?

24 Okay. Could you -- I'm not sure I --

25 MR. AJLOUNY: Are you aware of the -- a

1 fire station being in Coyote Valley along with
2 Coyote Valley Research Park?

3 MR. TYLER: I was -- I'm not aware of
4 any firm plan. I know that the fire department
5 suggested that -- that they need additional
6 services as a result of the development in
7 general.

8 MR. AJLOUNY: Okay. If there was -- if
9 there was a fire station going to be built for
10 Coyote Valley, would that change maybe your answer
11 to Mr. Valkosky's question of -- would it have any
12 influence on your feelings about, you know, adding
13 the HIT team there, if they're going to have a
14 station already being built there.

15 And I apologize for not making that
16 known. I just assumed people knew, and I -- and I
17 just looked through my questions and I never even
18 mentioned that. I skipped that question. I
19 apologize.

20 MR. TYLER: I'd have to reflect on Mr.
21 Valkosky's question, which I'm not sure I know
22 which one -- which question.

23 MR. AJLOUNY: Would it be reasonable to
24 put a HIT team in that fire station if it's going
25 to be built anyways, considering the atmosphere

1 and what we talked about with the power plant.

2 MR. TYLER: In light of the overall
3 development in the area, it probably is not --
4 wouldn't be a bad idea to consider putting in Haz
5 Mat response in the area. And it would be a
6 benefit to the community, in general.

7 MR. AJLOUNY: So now that you know that
8 there's a fire station, maybe it's a little bit
9 more reasonable to make it a HIT fire station.
10 And -- and that's the point. I appreciate your
11 testimony. Thank you.

12 HEARING OFFICER VALKOSKY: Okay. Just
13 let me get -- thank you, Issa.

14 I just want one point of clarification,
15 since you brought this up. Mr. Tyler, assuming
16 that this fire station is built, I understand your
17 statement to be that in light of the overall
18 development, it would be probably a good idea to
19 have a HIT team stationed there. Is that correct?

20 MR. TYLER: In light of response times
21 and handling of -- potential handling of hazardous
22 materials, as well as just the high occupancy rate
23 of the Cisco development.

24 HEARING OFFICER VALKOSKY: Right, and --
25 okay.

1 MR. TYLER: But I -- I couldn't justify
2 requiring something like that, based on the risk
3 associated with this facility.

4 HEARING OFFICER VALKOSKY: Okay. This
5 facility being solely the MEC project; is that
6 correct?

7 MR. TYLER: That's correct.

8 HEARING OFFICER VALKOSKY: Thank you.

9 Okay. I understand we have one item of
10 housekeeping. Mr. Harris.

11 MR. HARRIS: Yes. We found the paper we
12 were looking for earlier on the Water Resources
13 exhibits. Mr. Williams had requested page
14 numbers.

15 HEARING OFFICER VALKOSKY: Oh, right.
16 Yes.

17 MR. HARRIS: And I'd like to read those
18 into the record.

19 HEARING OFFICER VALKOSKY: Please do.

20 MR. HARRIS: The sections of the AFC
21 were Section 7, Section 8.9, and Section 8.14.

22 In terms of Supplement A, again this is
23 Water Resource testimony, pages 1-1 to 2-5, and
24 pages 3-6 to 3-29.

25 And AFC Supplement C is pages 1-1 to 2-

1 7, and page 3-25.

2 HEARING OFFICER VALKOSKY: Okay. Thank
3 you.

4 No other business, thank you all for
5 your attendance.

6 MR. WILLIAMS: Approximately when might
7 we expect the transcript of the first Evidentiary
8 Hearings --

9 HEARING OFFICER VALKOSKY: Okay. As I
10 explained to you off the record yesterday, Mr.
11 Williams, my understanding is that under the
12 contract between the State of California and the
13 reporting service, those are typically delivered
14 to the Commission, a hard copy, usually within
15 seven to ten days. Past that, it has to be
16 reproduced, it is sent up to our Web site to be
17 placed on the Web. My current understanding is
18 that our Webmaster indicates they have to have a
19 period of three days in order to ensure that that
20 gets placed, because of the volume. That's my
21 understanding of the way the system works.

22 My personal instruction to the people
23 that are involved in this is to do it as quickly
24 as possible. That's the best information I can
25 give you.

1 MR. WILLIAMS: Thank you, sir.

2 HEARING OFFICER VALKOSKY: You bet.

3 Okay. With that, we're adjourned. See

4 you all on the 30th. Good night.

5 (Thereupon the hearing was

6 adjourned at 10:25 p.m.)

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CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,
do hereby certify that I am a disinterested person
herein; that I recorded the foregoing California
Energy Commission Evidentiary Hearing; that it was
thereafter transcribed into typewriting.

I further certify that I am not of
counsel or attorney for any of the parties to said
Hearing, nor in any way interested in the outcome
of said Hearing.

IN WITNESS WHEREOF, I have hereunto set
my hand this 29th day of January, 2001.

JAMES RAMOS

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